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# STATE REGISTER

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**Printing Schedule for Agencies**

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
<b>SCHEDULE FOR VOLUME 9</b>			
21	Friday Nov 2	Friday Nov 9	Monday Nov 19
22	Friday Nov 9	Friday Nov 16	Monday Nov 26
23	Friday Nov 16	Monday Nov 26	Monday Dec 3
24	Monday Nov 26	Monday Dec 3	Monday Dec 10

\*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

\*\*Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION** also.

The **PROPOSED RULES** section contains:

- Calendar of public hearings on proposed rules.
- Proposed new rules (including notice of hearing and/or notice of intent to adopt rules without a hearing).
- Proposed amendments to rules already in existence in the Minnesota Rules.
- Proposed emergency rules.
- Withdrawal of proposed rules (option; not required).

The **ADOPTED RULES** section contains:

- Notice of adoption of new rules and rule amendments adopted without change from the previously published proposed rules. (Unchanged adopted rules are not republished in full in the *State Register* unless an agency requests this.)
- Adopted amendments to new rules or rule amendments (adopted changes from the previously published proposed rules).
- Notice of adoption of emergency rules.
- Adopted amendments to emergency rules (changes made since the proposed version was published).
- Extensions of emergency rules beyond their original effective date.

The **OFFICIAL NOTICES** section includes (but is not limited to):

- Notice of intent to solicit outside opinion before promulgating rules.
- Additional hearings on proposed rules not listed in original proposed rules calendar.

ALL ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* and filed with the Secretary of State before July 31, 1983 are published in the *Minnesota Rules 1983*. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after July 31, 1983 will be included in a supplement scheduled for publication in mid-1984. Proposed and adopted EMERGENCY (formerly called TEMPORARY) RULES appear in the *State Register* but are generally not published in the *Minnesota Rules 1983* due to the short-term nature of their legal effectiveness. Those that are long-term may be published.

The *State Register* publishes partial and cumulative listings of rule in the **MINNESOTA RULES AMENDMENTS AND ADDITIONS** list on the following schedule:

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
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# PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

## Department of Commerce

### Proposed Rules Governing Filing Fees for Insurance Policy Rates & Forms

#### Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Donald Peterson, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, section 60A.14, subdivision 1(c). Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Richard Gomsrud, Counsel, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this notice.

Copies of this notice and the proposed rules are available and may be obtained by contacting Rose Weiner at the above address.

Reynard L. Harp for  
Michael A. Hatch  
Commissioner of Commerce

**Rules as Proposed (all new material)****2605.0100 SCOPE OF AUTHORITY.**

Parts 2605.0100 to 2605.0400 apply to all licensed insurers and rate service, data service, or other organizations that make insurance policy form or rate filings required by statute. They are adopted pursuant to authority granted under Minnesota Statutes, sections 45.023 and 60A.14, subdivision 1, paragraph (c), clause (14).

**2605.0200 FILING FEES FOR CASUALTY AND PROPERTY INSURANCE.**

A \$10 filing fee applies to the following filing of rates, rules, policies, or endorsements relating to casualty or property insurance:

- A. Rates and rules pertaining to the same kind or line of insurance and submitted together are subject to a single filing fee.
- B. Policy forms and endorsements pertaining to the same kind of insurance and submitted together are subject to a single filing fee.
- C. Simultaneous identical filings by other insurers within a group or fleet of companies are subject to separate filing fees.
- D. Deviations from, including effective date change, or nonadoption of, rate service or data service organization filings are subject to filing fees.
- E. Policy forms, endorsements, and rate filings made by the Minnesota Automobile Insurance Plan or the FAIR Plan are subject to filing fees.
- F. The following kinds of worker's compensation filings:
  - (1) schedule of rates;
  - (2) rate deviation;
  - (3) schedule rating plans;
  - (4) dividend plans;
  - (5) policy forms;
  - (6) endorsements; and
  - (7) retrospective rating plans.

**2605.0300 LIFE AND HEALTH INSURANCE.**

A \$10 filing fee applies to each filing of policy forms, contracts, riders, endorsements, certificates, applications, or rates as further specified in items A to H.

- A. If a single policy or contract filing includes riders, endorsements, applications, or other forms designed to be issued or used in direct connection with that policy or contract, a single fee applies to that filing.
- B. Related endorsements, riders, applications, or other forms submitted as a single filing, when the policy or contract is not being filed, are subject to one filing fee.
- C. Each rate filing or rate revision is subject to a filing fee.
- D. Group insurance policy filings, including related certificates, applications, or other forms are subject to a single filing fee.
- E. Filings made by the Minnesota Comprehensive Health Association are subject to filing fees.
- F. When an insurer or the Minnesota Comprehensive Health Association fails to respond to an objection or inquiry within 90 days, a resubmission is required if action by the Department of Commerce is subsequently requested. An additional filing fee is required for the resubmission.

**2605.0400 PROVISIONS APPLICABLE TO ALL POLICY FORM AND RATE FILINGS.**

The provisions in items A to L apply to all insurance policy form and rate filings required by statute.

- A. A multipurpose form which can be used with more than one kind of policy, is subject to one filing fee.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## **PROPOSED RULES**

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- B. Filings made to comply with law changes are subject to filing fees.
- C. Filings made solely to change a company name or officer signature, correct printing errors, or make editorial changes are subject to filing fees.
- D. Filings made for the sole purpose of withdrawing forms or rates are not subject to filing fees.
- E. Exhibits and supporting data are not subject to filing fees.
- F. Subsequent correspondence initiated by the Department of Commerce relating to a specific filing does not require a separate fee, nor does any amended rate or form resulting from the correspondence.
- G. Filing fees are not refundable.
- H. In unusual situations not specifically covered by parts 2605.0100 to 2605.0400, the application or nonapplication of a filing fee will be determined by the commissioner of commerce.
- I. A filing consisting of a policy form, an application, and four endorsements are subject to a filing fee of \$10.
- J. Rates and rules submitted together with the filing described in item A are subject to an additional \$10 filing fee, for a total of \$20.
- K. A group of three companies submitting identical filings are subject to a \$10 filing fee for each company for a total of \$30.
- L. A filing for nonadoption or only changing the effective date of a prior rate service organization filing are subject to a \$10 filing fee. If the same filing also includes three endorsements replacing those filed on their behalf by the rate service organization, the filing fee remains the same.

## **Department of Health Division of Health Resources**

### **Proposed Rules Relating to Physician Assistants**

#### **Notice of Public Hearing**

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. § 14.14 (1982) in the above-entitled matter at the Cricket Inn, 2407 University Avenue Southeast, Minneapolis, Minnesota 55440 on December 13, 1984, commencing at 10:30 AM and continuing until all interested persons and groups have had an opportunity to be heard concerning adoption of these proposed rules by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing by sending them to Richard C. Luis, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, telephone: (612) 341-7610. The rule hearing procedure is governed by Minn. Stat. §§ 14.02 to 14.56 (1982) and Minn. Rules pts. 1400.0200 to 1400.1200 (1983). Questions regarding procedure may be directed to the administrative law judge at the above-listed address.

The Minnesota Department of Health proposes to adopt rules relating to the registration of physician assistants. The proposed rules, if adopted, will establish the administrative structure, the procedures, and the requirements for the registration of people qualified to be physician assistants. Authority for adoption of these rules is contained in Minn. Stat. § 214.13 (1982). A copy of the proposed rules is attached to this notice. The rulemaking process follows Minn. Laws ch. 640 (1984) which amends the statutes cited above.

Minn. Stat. ch. 10A requires each lobbyist to register with the Minnesota Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1982) as any individual:

- (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or
- (b) Who spends more than \$250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone: (612) 296-5148.

As a result of the hearing process, the proposed rule may be modified. Written material may be submitted and recorded in the hearing record for five working days after the public hearing ends. The comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day comment period the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during this three-day period.

Notice is hereby given that a Statement of Need and Reasonableness is available for review at the Department of Health and at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all the evidence and argument which the Minnesota Department of Health anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Notice: Any person may request notification of the date on which the Administrative Law Judge's Report will be available, after which date the Minnesota Department of Health may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the rule has been adopted and filed by the Department of Health with the Secretary of State. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge (in the case of the Administrative Law Judge's Report) or to the Department of Health (in the case of the agency's submission to the Secretary of State).

One free copy of this notice and the proposed rules may be obtained by contacting Mark Skubic, Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440. Additional copies will be available at the door on the date of the hearing.

Sister Mary Madonna Ashton  
Commissioner of Health

### Rules as Proposed (all new material)

#### REGISTRATION OF PHYSICIAN ASSISTANTS

##### 5600.2600 DEFINITIONS.

**Subpart 1. Scope.** For the purposes of parts 5600.2600 to 5600.2665, the following terms have the meanings given them.

**Subp. 2. Active status.** "Active status" means the status of a person who has met all the qualifications of a physician assistant and has a physician-physician assistant agreement in force and approved by the board.

**Subp. 3. Agreement.** "Agreement" means a document signed by the physician and the physician assistant which includes contents specified in part 5600.2635, subpart 3.

**Subp. 4. Alternate supervising physician.** "Alternate supervising physician" means a Minnesota licensed physician listed in the physician-physician assistant agreement who shall be responsible for supervising the physician assistant when the supervising physician is unavailable. The alternate supervising physician shall accept full medical responsibility for the performance, practice, and activities of the physician assistant while under the supervision of the alternate supervising physician.

**Subp. 5. Board.** "Board" means the Minnesota Board of Medical Examiners.

**Subp. 6. Commissioner.** "Commissioner" means the commissioner of the Department of Health.

**Subp. 7. Contact hour.** "Contact hour" means an instructional session of 60 consecutive minutes, excluding coffee breaks, registration, meals with a speaker or without a speaker, and other social activities.

**Subp. 8. Inactive status.** "Inactive status" means the status of a person who has met all the qualifications of a physician assistant but does not have a physician-physician assistant agreement in force and approved by the board.

**Subp. 9. Physician.** "Physician" means a person currently licensed in good standing as a physician or osteopath under Minnesota Statutes, chapter 147.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## PROPOSED RULES

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**Subp. 10. Physician assistant; registered physician assistant.** "Physician assistant" or "registered physician assistant" means a person registered pursuant to parts 5600.2600 to 5600.2665 who is qualified by academic or practical training or both to provide patient services as listed in part 5600.2615 under the supervision of a supervising physician.

**Subp. 11. Registration.** "Registration" is the process by which the board determines that an applicant has been found to meet the standards and qualifications specified in parts 5600.2600 to 5600.2665.

**Subp. 12. Supervising physician.** "Supervising physician" means a Minnesota licensed physician who accepts full medical responsibility for the performance, practice, and activities of a physician assistant under an agreement approved by the board and pursuant to part 5600.2615. "Supervising physician" shall include "alternate supervising physician" for the purposes of parts 5600.2600 to 5600.2665.

### **5600.2605 PURPOSE.**

The purpose of parts 5600.2600 to 5600.2665 is to establish the administrative structure, the procedures, and the requirements for the registration of people qualified to be physician assistants.

### **5600.2610 RESTRICTIONS ON USE OF THE TITLE OF REGISTERED PHYSICIAN ASSISTANT.**

**Subpart 1. Physician assistant identification.** A registered physician assistant in active status may use the title "physician assistant" or "registered physician assistant" without restriction. A registered physician assistant in active status shall identify himself or herself at the practice site by using a name tag or name plate or some other identifying device bearing the title "registered physician assistant."

**Subp. 2. Inactive status.** A registered physician assistant in inactive status may not use the title "registered physician assistant" in connection with the delivery of health care services. A registered physician assistant in inactive status may not use the title on a name tag or name plate at any medical or health care facility or office in providing patient services.

### **5600.2615 SCOPE OF PHYSICIAN ASSISTANT PRACTICE.**

**Subpart 1. General limitation on scope of practice.** Patient services must be limited to services within the training and experience of the physician assistant, services customary to the practice of the supervising physician, and services delegated by the supervising physician.

**Subp. 2. Descriptive list of allowed services.** Patient services may include:

- A. taking complete, detailed, and accurate patient histories and reviewing patient records to develop comprehensive medical status reports;
- B. performing physical examinations and recording all pertinent patient data;
- C. interpreting and evaluating patient data as authorized by the supervising physician for the purpose of determining appropriate management and treatment of patients;
- D. initiating requests for, or performing, diagnostic procedures as indicated by pertinent data, and as authorized by the supervising physician;
- E. performing therapeutic procedures appropriate to the practice of the supervising physician as authorized by the supervising physician;
- F. providing instructions and guidance regarding medical care matters; and
- G. assisting the supervising physician in the delivery of services to patients requiring medical care in the home and in health care institutions, including, but not limited to, recording patient progress notes, issuing diagnostic orders, and transcribing or executing specific orders at the direction of the supervising physician.

### **5600.2620 REQUIREMENTS FOR ADEQUATE SUPERVISION.**

**Subpart 1. General requirements.** To ensure the supervising physician assumes full medical responsibility for patient services provided by the physician assistant, the supervising physician shall instruct and direct the physician assistant in the assistant's duties, oversee and check the assistant's work, and provide general direction to the assistant. The physician assistant and supervising physician shall comply with at least the following criteria:

- A. A supervising physician must be able to be contacted within 15 minutes either in person or by telecommunication for consultation with the assistant.
- B. A supervising physician shall review and evaluate patient services provided by the physician assistant on a daily basis from information in patient charts or records. Review may either be in person or by telecommunication.
- C. A supervising physician shall be on site at facilities staffed by a physician assistant if they are separate from the usual practice site of the supervising physician at least twice a week for at least eight hours a week during patient contact time.

D. A supervising physician may not supervise more than two physician assistants.

E. The training and experience of the physician assistant must be appropriate to the specialty and scope of practice of the supervising physician.

F. The prescribing, administering, and dispensing of legend drugs shall only be done in accordance with Minnesota Statutes, chapter 151.

G. Only a physician who assumes full medical responsibility for patient services provided by a physician assistant, and is within the group or association of the supervising physician, may be designated in the physician-physician assistant agreement as an alternate supervising physician.

**5600.2625 REQUIREMENTS FOR REGISTRATION.**

**Subpart 1. Requirements for registration in active status.** An applicant for registration as a physician assistant in active status shall:

A. Successfully complete a physician assistant training program recognized by the board as approved by a national accrediting or certifying body for physician assistant training or which is approved by the board as being equivalent of an accredited program for training physician assistants.

B. Successfully complete an examination which has been approved by the board as assessing physician assistant skills judged appropriate by the board. The examination must meet the following criteria:

(1) The examination must be validated by a content validity study which consists of data showing that the examination covers a representative sample of the job tasks, work behavior, or performance skills essential to the job for which the applicant is to be evaluated; or the examination must be validated by a criterion-related validity study which consists of empirical data demonstrating that the selection is predictive of, or significantly correlated with job performance and which has a validity coefficient significant at the 0.05 level of significance.

(2) Validity studies must be based upon a review of information about the job for which the examination is to be used. The review must include at least an analysis of job tasks, work behavior, or performance skills that are relevant to the job.

(3) Job tasks, work behaviors, or performance skills used as a basis for test developments or validity studies must include at least the procedures and techniques which may be delegated to physician assistants as outlined in part 5600.2615.

(4) The examination must be determined to be reliable utilizing the parallel forms or internal consistency methods of estimating reliability and the reliability coefficient must be not less than 0.70.

(5) The examination must be revised or a new form must be issued when technical advances indicate the examination should be updated to acknowledge related changes in the definition of physician assistant as outlined in part 5600.2615.

(6) The examination must be revised or a new form must be issued when it is necessary to meet additional standards or knowledge requirements adopted by the commissioner.

C. Have an agreement between the physician and physician assistant which complies with part 5600.2635, subpart 3.

**Subp. 2. Requirements for registration in inactive status.** An applicant for registration as a physician assistant in inactive status must meet the requirements of part 5600.2625, subpart 1, items A and B.

A physician assistant in inactive status may apply for registration in active status when the requirements of part 5600.2625, subpart 1, item C are met.

**5600.2630 APPLICATION PROCESS FOR INITIAL REGISTRATION.**

**Subpart 1. Form required.** All applicants for initial registration as physician assistants shall submit an application on forms provided by the board together with fees described under part 5600.2655. The application must include information sufficient to permit a complete evaluation of each applicant to determine whether the applicant meets the requirements for registration and must include information sufficient to permit an evaluation by the board of the proposed supervision of the physician assistant. For the purpose of confirming the applicant's qualifications or to clarify the proposed supervisory relationship, the board shall request that an applicant submit additional information if it is necessary to clarify incomplete or ambiguous information presented in the application.

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**Subp. 2. Contents of application form.** The application form must include questions which require the applicant to do the following:

- A. provide demographic information as deemed necessary by the board;
- B. list or describe areas of specialization or special training or experience of the physician assistant including previous work history;
- C. provide certification from the director of the program or dean of the school of successful completion of an approved program as described in part 5600.2625, subpart 1, item A;
- D. provide certification demonstrating successful completion of an approved examination as described in part 5600.2625, subpart 1, item B; and
- E. provide the names and addresses of two individuals who can be contacted for a reference about the applicant, one of whom is a physician or osteopath licensed in the United States, other than the supervising physician, who personally know the applicant.

### **5600.2635 APPLICATION PROCESS FOR APPROVAL OF AGREEMENT BETWEEN PHYSICIAN AND PHYSICIAN ASSISTANT.**

**Subpart 1. Form required.** An applicant seeking active status must submit an application on forms provided by the board and an agreement signed by the physician assistant and the supervising physician and any alternate supervising physician.

**Subp. 2. Contents of form.** The completed application form must contain the following information:

- A. identify the licensed supervising physician and any areas of specialization of the physician and alternate supervising physicians;
- B. describe the practice in which the physician assistant will be used and the current plans for use of the physician assistant;
- C. identify and describe the practice sites of the supervising physician and physician assistant;
- D. identify other physicians or physician assistants who may be involved;
- E. list or describe areas of specialization, special training, or experience of the physician assistant; and
- F. provide any other information which is judged to be necessary by the board to answer questions regarding supervision of the physician assistant.

**Subp. 3. Contents of agreement.** The agreement must include at least the following:

- A. specific plans for supervision of the physician assistant by the supervising physician as well as alternate supervising physicians if more than one physician will be working with the physician assistant;
- B. plans for supervision when the supervising physician is not available;
- C. restrictions or instructions regarding the functions or practices of the physician assistant and any letters of agreement or other protocols to or with any health care facility concerning the practice of the physician assistant when functioning in the facility, including letters of agreement made for or with pharmacists regarding the practice of the physician assistant in carrying out the directions of the physician;
- D. a statement that the supervising physician and alternate supervising physician assume full medical responsibility for all patient services provided by the physician assistant; and
- E. any other information which will assist the board in determining whether the physician assistant will be adequately supervised by the supervising physician.

**Subp. 4. Modification or termination of agreement.** The physician assistant and the supervising physician shall notify the board upon the modification or termination of the agreement. Upon termination of the agreement, the board shall classify the physician assistant in inactive status until a new agreement is approved. If the modification results in an expansion of the physician assistant's duties, the modification must be approved by the board before the physician assistant begins the new duties.

### **5600.2640 TEMPORARY REQUIREMENTS DURING TRANSITION.**

**Subpart 1. Initial registration requirements.** An applicant for initial registration as a physician assistant is not required to meet the requirements of part 5600.2625, subparts 1, items A and B; and 2, until two years after the effective date of parts 5600.2600 to 5600.2665 if the applicant provides documented evidence that the following requirements have been met:

A. An applicant has completed a course of study in medical care which was at least 18 months full time and which had course content judged by the board to be equivalent to the program content of an accredited physician assistant program. An applicant may petition the board to accept informal training which the board judges to be equivalent in program content to an accredited program.

B. An applicant has been employed as a full-time physician assistant for at least four of the last five years under the supervision of a licensed physician. This experience must be recorded on forms provided by the board.

**Subp. 2. Examination requirements.** A physician assistant who qualified for initial registration by meeting the requirements of subpart 1 must successfully complete an examination which meets the requirements of part 5600.2625, subpart 1, item B within two years of the date initial registration was approved by the board. If the physician assistant successfully completes the examination within the two years, a physician assistant is exempt from meeting the requirements for registration of part 5600.2625, subpart 1, item A. If the physician assistant does not successfully complete the examination within the two years, the board will revoke the physician assistant's registration and the physician assistant shall then meet all the requirements of part 5600.2625 for registration.

**Subp. 3. Active status requirements.** A physician assistant who qualified for initial registration by meeting the requirements of subpart 1 must also meet the requirements of part 5600.2625, subpart 1, item C if the physician assistant wishes to be registered in active status.

#### **5600.2645 APPLICATION PROCESS FOR REREGISTRATION.**

A physician assistant's registration expires each year on July 1. Each physician assistant must reregister on or before July 1 of each year by submitting a completed application for reregistration on a form provided by the board together with the annual reregistration fee. The information supplied on the application for reregistration must be sufficient for the board to determine whether the physician assistant continues to meet the requirements for registration in part 5600.2625 or 5600.2640. In addition, the applicant must meet the continuing education requirements of part 5600.2650. The board may request a physician assistant to submit additional information to clarify information presented in the application for reregistration. An application submitted after the reregistration deadline date must be accompanied by a late fee.

#### **5600.2650 CONTINUING EDUCATION REQUIREMENTS.**

**Subpart 1. Amount of education required.** Applicants for reregistration must either attest to and document successful completion of at least 50 contact hours of board-approved continuing education or the equivalent within the two years immediately preceding reregistration, or attest to and document taking the national certifying examination within the past two years.

**Subp. 2. Type of education required.** Approved continuing education activities are learning experiences designed to promote continuing competency in the procedures and techniques outlined in part 5600.2615. The activities must receive board approval for continuing education.

The board shall base its approval of a continuing education activity on the following criteria:

A. It must have specific, written objectives which describe expected outcomes for the participant.

B. It must be presented by knowledgeable persons who have reviewed the development in the subject being covered in the program within the last two years. The presenting person must have specialized training in the subject matter, experience in teaching the subject matter, or experience in working in the subject areas.

C. It must last at least one contact hour.

D. It must utilize a mechanism to validate participation, such as earned credits or verification of attendance. Program sponsors shall maintain attendance sheets for three years.

**Subp. 3. Restrictions on earning credits through contact hour equivalents.** Contact hour equivalents can include medical teaching, publication of books or papers, lectures, exhibits, and self-teaching. No more than ten hours of credit may be obtained in any renewal period through medical teaching. No more than ten hours of credit may be obtained in any renewal period through a combination of publications, lectures, and exhibits. No more than ten hours of credit may be obtained through self-teaching. Credits may be obtained in the following ways:

A. five hours of credit for a scientific paper or book chapter published in a peer-reviewed medical journal or book;

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B. an hour of credit for each hour spent lecturing at a course which qualifies for board approval under subpart 2;

C. an hour of credit for each hour spent self-teaching; and

D. five hours of credit for a paper or exhibit presented before a professional or allied health audience. Credit may be claimed only once for such a presentation.

**Subp. 4. Verification of continuing education reports.** Periodically, the board shall select a sample of the registered physician assistants and request evidence of continuing education to which they attested. Documentation may come directly from the registrant or from a national accrediting or certifying organization which maintains those types of records.

### 5600.2655 APPLICATION FEES.

**Subpart 1. Initial registration fee.** The initial registration fee shall be \$100.

**Subp. 2. Annual reregistration fee.** The annual fee for reregistration shall be \$20.

**Subp. 3. Penalty fee for late renewals.** The penalty fee for late submission of an application for reregistration shall be \$5.

**Subp. 4. Fee for approval of agreements.** The fee for approval of an agreement between a physician and physician assistant by the board shall be \$30.

**Subp. 5. Notice of fee changes.** The board shall notify physician assistants about fee changes under subparts 1 to 4 in the same manner as it notifies physicians about those types of fee changes.

### 5600.2660 PROCESS AND GROUNDS FOR DISCIPLINARY ACTION.

**Subpart 1. Investigation of complaints.** Upon receiving a complaint or other oral or written communication, which alleges or implies the existence of grounds for revocation of registration or disciplinary actions as specified in subpart 2, the physician assistant council established in part 5600.2665 may initiate an investigation. The council may request the physician assistant to appear before it to determine the merits of the situation in question. In each case, the council shall make a recommendation to the board as to whether proceedings under the contested case provisions of the Administrative Procedure Act, Minnesota Statutes, sections 14.57 to 14.70, would be appropriate and should be initiated. Before any disciplinary action, a written complaint must be obtained from a complaining party.

**Subp. 2. Disciplinary options of board.** The board shall refuse to grant or renew a registration, or shall suspend or revoke a registration, or use any reasonable lesser remedy against a physician assistant if the assistant:

A. submits false or misleading information or credentials in order to obtain or renew registration;

B. fails to meet the requirements for initial or reregistration;

C. incompetently, negligently, or inappropriately performs patient services;

D. performs patient service beyond the scope of practice authorized by this part;

E. violates parts 5600.2600 to 5600.2665; or

F. is unable to perform patient services with reasonable skill and safety to patients due to physical or mental illness or use of alcohol, drugs, or other substance.

**Subp. 3. Disciplinary actions.** If the board finds that a physician assistant should be disciplined pursuant to subpart 2, the board may take any one or more of the following actions:

A. refuse to grant or renew a registration;

B. revoke a registration;

C. suspend any registration for a definite period;

D. administer a public or private reprimand;

E. condition, limit, or restrict a registration; or

F. place the physician assistant on probation, which probation may be vacated upon compliance with such reasonable terms as the board may impose.

**Subp. 4. Consequences of disciplinary action.** Upon the revocation or suspension, the registrant shall return to the board his or her registration and current renewal document.

**Subp. 5. Reinstatement requirements after disciplinary action.** A physician assistant who has had registration revoked cannot apply for reinstatement until at least one year after the effective date of the revocation or for a longer period of time specified by the board. A suspended registration shall be reinstated upon fulfillment of the terms of suspension. All requirements of part 5600.2645 for renewing registration, if applicable, must also be met before reinstatement.

**5600.2665 PHYSICIAN ASSISTANT ADVISORY COUNCIL.**

**Subpart 1. Membership.** Subject to approval by the board, the commissioner shall appoint seven persons to a physician assistant advisory council. The seven persons must include:

- A. two public members, as defined in Minnesota Statutes, section 214.02;
- B. three physician assistants registered under parts 5600.2600 to 5600.2665; and
- C. two licensed physicians one of whom must be a representative of the board.

**Subp. 2. Organization.** The council shall be organized and administered under Minnesota Statutes, section 15.059.

**Subp. 3. Duties.** The council shall:

- A. advise the board regarding physician assistant registration standards;
- B. advise the board on enforcement of parts 5600.2600 to 5600.2665;
- C. provide for distribution of information regarding physician assistant registration standards;
- D. review applications and recommend applicants for registration or reregistration;
- E. perform disciplinary investigations; and
- F. perform other duties as directed by the board.

## Department of Human Services Health Care Services Division

### Proposed Rules Governing Hospital Admission Certification

#### Notice of Hearing

NOTICE IS HEREBY GIVEN that a public hearing on the above-entitled matter will be held in Room D, Fifth Floor, Veterans Service Building, 12th and Columbus, St. Paul, Minnesota 55155, on December 31, 1984, commencing at 9:00 a.m. and continuing until all interested persons have an opportunity to be heard. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to Howard Kaibel, Administrative Law Judge, Office of Administrative Hearings, 400 Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, telephone 612/341-7608, either before the hearing or within five working days after the public hearing ends. The Administrative Law Judge may, at the hearing, order the record be kept open for a longer period not to exceed 20 calendar days. Following the close of the comment period the agency and all interested persons have three business days to respond in writing to any new information submitted during the comment period. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during this three-day period. The written responses shall be added to the rulemaking record. Upon the close of the record the Administrative Law Judge will write a report as provided for in Minnesota Statutes, section 14.50. The rule hearing is governed by Minnesota Statutes sections 14.01-14.56 and by Minnesota Rules part 1400.0200-1400.1200. Questions about procedure may be directed to the Administrative Law Judge.

Minnesota Rules, parts 9505.0500 to 9505.0540 establish criteria and procedures for inpatient hospital admission certification as a system to review the utilization of inpatient hospital care for hospitals which participate in the Medical Assistance (MA) and General Assistance Medical Care (GAMC) Programs.

Parts 9505.0500 to 9505.0540 include definitions; requirement for inpatient admission certification; responsibilities of

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admitting physicians, hospitals, and the medical review agent; procedure for admission certification; medical record review and determination; criteria for determination; and request for reconsideration.

The agency's authority to adopt the proposed rules is contained in Minnesota Laws 1983, Chapter 312, Article 5, Sections 12, 33, and 38. The cost to local public bodies of implementing the proposed rule changes will not exceed \$100,000 for either of the first two years following passage of the rule.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to Deby Moerer or Penny Olson, Health Care Programs, Department of Human Services 4th Floor, Space Center, St. Paul, Minnesota 55101, telephone 612/297-3713 or 612/297-2573. Additional copies will be available at the hearing. If you have any questions on the content of the rule amendments, contact Deby Moerer or Penny Olson.

Notice is hereby given that a Statement of Need and Reasonableness is available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Note: Any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the rule has been adopted and filed by the agency with the Secretary of State. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge (in the case of the Administrative Law Judge's report), or to the agency (in the case of the agency's submission to the Secretary of State).

Minnesota Statutes, Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statutes, section 10A.01, subdivision 11 as any individual:

A. Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

B. Who spends more than \$250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone 612/296-5615.

October 25, 1984

Leonard W. Levine  
Commissioner of Human Services

### Rules as Proposed (all new material)

#### 9505.0500 DEFINITIONS.

**Subpart 1. Scope.** As used in parts 9505.0500 to 9505.0540, the following terms have the meanings given them.

**Subp. 2. Admission.** "Admission" means the act that allows the recipient to officially enter a hospital to receive inpatient hospital services under the supervision of a physician who is a member of the medical staff.

**Subp. 3. Admission certification.** "Admission certification" means the determination of the medical review agent that inpatient hospitalization is medically necessary and that medical assistance or general assistance medical care funds may be used to pay the admitting physician, hospital, and other vendors of inpatient hospital services for providing medically necessary services, subject to parts 9500.0750 to 9500.1080, 9505.5000 to 9505.5020 [Emergency], and 9505.1000 to 9505.1040.

**Subp. 4. Admitting physician.** "Admitting physician" means the physician who orders the recipient's admission to the hospital and who is a party to a written provider agreement with the department.

**Subp. 5. Certification number.** "Certification number" means the number issued by the medical review agent.

**Subp. 6. Clinical evaluator.** "Clinical evaluator" means a person who is employed by or under contract with the medical review agent and who is either licensed by the Minnesota Board of Nursing to practice professional nursing under Minnesota Statutes, section 148.171, or a physician.

**Subp. 7. Commissioner.** "Commissioner" means the commissioner of human services or an authorized representative of the commissioner.

**Subp. 8. Concurrent review.** "Concurrent review" means a review and determination performed while the recipient is in the hospital and focused on the medical necessity of inpatient hospital services. The review consists of admission review, continued stay review, and, when appropriate, procedure review.

**Subp. 9. Continued stay review.** "Continued stay review" means a review and determination, after the admission certification and during a patient's hospitalization, of the medical necessity of continuing the recipient's stay at a hospital level of care.

**Subp. 10. Department.** "Department" means the Minnesota Department of Human Services.

**Subp. 11. Emergency.** "Emergency" means a medical condition that if not immediately diagnosed or treated could cause a recipient serious physical or mental disability, continuation of severe pain, or death.

**Subp. 12. General assistance medical care or GAMC.** "General assistance medical care" or "GAMC" means the health services provided to a recipient under the general assistance medical care program according to Minnesota Statutes, section 256D.03, and applicable rules adopted by the commissioner as either may from time to time be amended and enforced.

**Subp. 13. Hospital.** "Hospital" means an institution that is approved to participate as a hospital under Medicare and that is maintained primarily for the treatment and care of patients with disorders other than mental diseases and tuberculosis.

**Subp. 14. Inpatient hospital service.** "Inpatient hospital service" means a service provided under the supervision of a physician and furnished in a hospital for the care and treatment of a recipient who occupies a bed and stays in the hospital for one night or more. The inpatient hospital service may be furnished by a hospital, physician, or a vendor of an ancillary service prescribed by a physician that may be paid for under medical assistance or general assistance medical care.

**Subp. 15. Local agency.** "Local agency" means a county or multicounty agency authorized under Minnesota statutes as the agency responsible for determining eligibility for the medical assistance and general assistance medical care programs.

**Subp. 16. Medical assistance or MA.** "Medical assistance" or "MA" means the program established under title XIX of the Social Security Act and Minnesota Statutes, chapter 256B.

**Subp. 17. Medical review agent.** "Medical review agent" means the representative of the commissioner who is authorized by the commissioner to make decisions about admission certifications, concurrent reviews, continued stay reviews, and retrospective reviews.

**Subp. 18. Medically necessary.** "Medically necessary" means an inpatient hospital service that is consistent with the recipient's diagnosis and condition, and under the criteria in part 9505.0540 cannot be provided on an outpatient basis.

**Subp. 19. Medicare.** "Medicare" means the federal health insurance program for the aged and disabled under title XVIII of the Social Security Act.

**Subp. 20. Physician.** "Physician" means a person licensed to provide services within the scope of the profession as defined in Minnesota Statutes, chapter 147.

**Subp. 21. Physician adviser.** "Physician adviser" means a physician who practices in the specialty area of the recipient's primary diagnosis or a specialty area related to the primary diagnosis.

**Subp. 22. Prior authorization.** "Prior authorization" means the prior approval for medical services by the department as required under applicable rules and regulations adopted by the commissioner.

**Subp. 23. Readmission.** "Readmission" means admission for an inpatient hospital service for the same diagnosis or a related condition or the treatment of a condition which grew out of the previous diagnosis which occurs within seven days of a prior discharge of the recipient from a hospital.

**Subp. 24. Recipient.** "Recipient" means a person who has applied to the local agency and has been determined eligible for the medical assistance or general assistance medical care program.

**Subp. 25. Reconsideration.** "Reconsideration" means a review of a denial or withdrawal of admission certification according to part 9505.0520, subpart 9.

**Subp. 26. Retrospective review.** "Retrospective review" means a review conducted after inpatient hospital services are

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provided to a recipient. The review is focused on determining the medical necessity of the admission, the medical necessity of any inpatient hospital services provided, and whether all medically necessary inpatient hospital services were provided.

### 9505.0510 APPLICABILITY.

Parts 9505.0500 to 9505.0540 establish the standards and procedures for admission certification to be followed by admitting physicians and hospitals seeking medical assistance or general assistance medical care payment for inpatient hospital services provided to medical assistance or general assistance medical care recipients under Minnesota Statutes, chapters 256B and 256D. Parts 9505.0500 to 9505.0540 are to be read in conjunction with Code of Federal Regulations, title 42, and titles XVIII and XIX of the Social Security Act. The department retains the authority to approve prior authorizations established under parts 9505.5000 to 9505.5020 [Emergency]. Parts 9505.0500 to 9505.0540 do not apply to out-of-state hospitals and admitting physicians who seek medical assistance or general assistance medical care program payment for inpatient hospital services provided to recipients who are Minnesota residents. Instate admitting physicians who admit a Minnesota resident who is a recipient to an out-of-state hospital must comply with parts 9505.0500 to 9505.0540. Out-of-state admitting physicians who admit a Minnesota resident who is a recipient to an in-state hospital must comply with parts 9505.0500 to 9505.0540.

### 9505.0520 INPATIENT ADMISSION CERTIFICATION.

**Subpart 1. Requirement for admission certification.** Except as provided in subpart 2, an admission providing inpatient hospital service to a recipient must receive admission certification prior to the recipient's admission in order for the admitting physician, the hospital, or other vendor of an inpatient hospital service to receive medical assistance or general assistance medical care program payment for the inpatient hospital service.

**Subp. 2. Exclusions from admission certification or prior admission certification.** Admission for inpatient hospital services under items A and B shall be excluded from the requirement in subpart 1.

A. An emergency admission may occur without prior admission certification and shall be subject to subpart 4, item B.

B. Admission certification is not required for delivery of a newborn, inpatient dental procedures, or inpatient hospital services for which a recipient has been approved under Medicare. However, denial of an inpatient hospital service under Medicare because the service is not medically necessary shall also constitute sufficient grounds for denying payment for the service under medical assistance.

**Subp. 3. Admitting physician responsibilities.** The admitting physician who seeks medical assistance or general assistance medical care program payment for an inpatient hospital service to be provided to a recipient shall:

A. Obtain prior authorization from the department for any service requiring prior authorization. Medical assistance and general assistance medical care payment shall be denied when a required prior authorization is not obtained prior to admission.

B. Request admission certification by contacting the medical review agent either by phone or in writing and providing the information in subitems (1) to (8):

(1) hospital's medical assistance provider number and name;

(2) recipient's name, medical assistance or general assistance medical care identification number, and date of birth;

(3) admitting physician's name and medical assistance provider number;

(4) primary procedure code according to the most recent edition of Current Procedural Terminology published by the American Medical Association or the International Classification of Diseases—Clinical Modification, published by the Commission on Professional and Hospital Activities, Green Road, Ann Arbor, Michigan 48105 which are incorporated by reference. These books are available through the Minitex interlibrary loan system and are subject to change;

(5) expected date of admission;

(6) whether the admission is a readmission;

(7) admitting diagnosis by diagnostic code according to the most recent edition of the International Classification of Diseases—Clinical Modification; and

(8) information from the plan of care and the reason for admission as necessary for the medical review agent to determine if admission is medically necessary.

C. Provide the following information when applicable:

(1) surgeon's name and medical assistance provider number;

(2) expected date of surgery; and

(3) affirmation that a second surgical opinion and prior authorization.

D. Inform the hospital of the certification number.

E. For purposes of billing, enter the certification number on, and attach a copy of a necessary prior authorization form and a second or third surgical opinion to all invoices submitted to the department for payment.

**Subp. 4. Hospital responsibilities.** A hospital that seeks medical assistance or general assistance medical care program payment for inpatient hospital services provided to a recipient shall:

A. Obtain from the admitting physician the certification number.

B. In an emergency admission, inform, by phone, the medical review agent of the emergency admission and provide the information required in subpart 3, items B and C, if applicable, within 48 hours of the emergency admission exclusive of weekends and holidays and, if required under parts 9505.5000 to 9505.5030 [Emergency], initiate the procedures for prior authorization and second surgical opinion. If the hospital fails to notify the medical review agent within 48 hours, the hospital shall submit, at its own expense, a copy of the complete medical record to the medical review agent within 30 days after the recipient's discharge. Failure to submit the record shall result in denial of the certification number.

C. For billing purposes, enter the certification number on all invoices submitted to the department for payment.

**Subp. 5. Retroactive eligibility.** A hospital may seek admission certification for a person found retroactively eligible for medical assistance or general assistance medical care program benefits after the date of admission. The hospital shall inform the admitting physician of the admission certification number of a retroactively eligible recipient. An admitting physician and a hospital shall not seek admission certification for a person whose application for the medical assistance or general assistance medical care program is pending. The medical review agent may require the hospital to submit, at its own expense, a copy of the complete medical record to substantiate the medical necessity of the admission. Failure to submit a requested record shall result in denial of admission certification.

**Subp. 6. Medical review agent responsibilities.** The medical review agent shall:

A. obtain and review the information required in subpart 3, items B and C, if applicable;

B. determine within 24 hours of receipt of the information, exclusive of weekends and holidays, whether admission is medically necessary;

C. inform the admitting physician and the hospital of the determination, by phone, within 24 hours of receipt of the information, exclusive of weekends and holidays;

D. mail a written notice of the admission certification determination to the admitting physician and the hospital within five days of the determination, exclusive of weekends and holidays;

E. determine if admission of a retroactively eligible recipient was medically necessary;

F. provide for a reconsideration of a denial or withdrawal of admission certification;

G. recruit and coordinate the work of the physician advisers;

H. notify the admitting physician and the quality assurance director of the hospital, by phone, of a reconsideration decision within 24 hours of the decision, exclusive of weekends and holidays; and

I. mail a written notice of the reconsideration decision to the admitting physician, the quality assurance director of the hospital, and the department within five days of the determination, exclusive of weekends and holidays.

**Subp. 7. Ineligibility to serve as physician adviser.** A physician shall not be eligible to serve as a physician adviser if:

A. the physician is the admitting physician; or

B. during the previous 12 months, the physician issued treatment orders or participated in the formulation or execution of the treatment plan for the recipient for whom admission certification is requested; or

C. the physician and the physician's family, which means the physician's spouse, child, grandchild, parent, or grandparent, has an ownership interest of five percent or more in the hospital for which admission certification is being requested; or

D. the physician has a financial interest in the medical practice of the admitting physician.

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## PROPOSED RULES

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**Subp. 8. Procedure for admission certification.** The procedure for admission certification shall be as in items A to H.

A. Upon receipt of the information requested in subpart 3, items B and C, if applicable, the clinical evaluator shall review the information and determine whether the admission is medically necessary.

B. If the clinical evaluator determines the admission is medically necessary, the medical review agent shall issue a certification number.

C. If the clinical evaluator is unable to determine that the admission is medically necessary, the evaluator shall contact a physician adviser.

D. If the physician adviser determines that the admission is medically necessary, the medical review agent shall issue a certification number.

E. If the physician adviser is unable to determine that the admission is medically necessary, the physician adviser shall notify the clinical evaluator by phone, the clinical evaluator shall notify the admitting physician by phone, and the admitting physician may request a second physician adviser's opinion.

F. If the admitting physician requests a second physician adviser's opinion, the clinical evaluator shall contact a second physician adviser.

G. If the second physician adviser determines that the admission is medically necessary, the medical review agent shall issue a certification number.

H. If the second physician adviser determines that the admission is not medically necessary, the medical review agent shall deny the admission certification and shall not issue a certification number.

**Subp. 9. Reconsideration.** The admitting physician or the hospital may request reconsideration of a decision to deny or withdraw an admission certification. The admitting physician or the hospital shall submit the request in writing to the medical review agent within 30 days of the date of receipt of the letter denying or withdrawing admission certification. Upon receipt of the request, the medical review agent shall appoint at least three physician advisers, none of whom shall have been involved previously in the procedure for the recipient's admission certification, to hear the reconsideration. The reconsideration may be conducted by means of a telephone conference call. The admitting physician or the hospital may submit additional facts to support the request for admission certification. The physician advisers may seek additional facts and medical advice as necessary to decide whether the admission is medically necessary. The reconsideration shall be completed within 30 days of the receipt of the request. Any party may appeal the determination of the physician advisers according to the contested case provisions of Minnesota Statutes, chapter 14, by filing a written notice of appeal with the commissioner within 20 days of the date of receipt of the notice of the determination.

**Subp. 10. Medical record review and determination.** The medical review agent shall be authorized to conduct a concurrent, continued stay, or retrospective review of a recipient's medical record to determine whether the inpatient hospital services were medically necessary, whether a continued stay will be medically necessary, or whether all medically necessary services were provided. The procedure for concurrent, continued stay, and retrospective reviews shall be as in items A to D.

A. A clinical evaluator shall review the medical record and may review the bills, invoices, and all supporting documentation pertaining to a request for medical assistance and general assistance medical care payment.

B. If the clinical evaluator is unable to determine that the recipient's admission was medically necessary, that the recipient's continued stay will be medically necessary, or that all medically necessary services were provided, the clinical evaluator shall request additional information from the admitting physician or the hospital as necessary to clarify the medical record.

C. If, after additional information is submitted, the clinical evaluator is unable to determine that the recipient's admission was medically necessary, that the recipient's continued stay will be medically necessary, or that all medically necessary services were provided, a physician adviser shall be consulted.

D. If a physician adviser determines that the recipient's admission was not medically necessary, that the recipient's continued stay will not be medically necessary, or that all medically necessary services were not provided, the medical review agent shall withdraw the previously issued certification number and shall notify the admitting physician and hospital by telephone within 24 hours and by written notice mailed within 24 hours.

**Subp. 11. Consequences of withdrawal of admission certification.** If the medical review agent determines that the admission was not medically necessary or that all medically necessary inpatient hospital services were not provided or that some or all of the inpatient hospital services were not medically necessary, the department shall withdraw the certification number and may take action as specified in items A to E.

A. For hospitals receiving payments on a per admission basis, the entire payment shall be debited for an admission that

was not medically necessary. If the admission was medically necessary but some or all of the inpatient hospital services were not medically necessary, the matter shall be referred to the department which may take action under parts 9505.1750 to 9505.2150. If the hospital failed to provide services that were medically necessary, the matter shall be referred to the department which may take action under parts 9505.1750 to 9505.2150.

B. For hospitals receiving per diem payment, no payment shall be made if the admission was not medically necessary. If the stay or a portion of the stay was not medically necessary, no payment shall be made for the portion of the stay that was not medically necessary.

C. If the medical review agent determines that additional inpatient hospital services will not be medically necessary, the medical review agent shall notify the hospital, admitting physician, and the recipient or the person designated by the recipient in the hospital record that no payment will be made for additional hospital services.

D. If the admission was not medically necessary, the department may seek to recover payments made to physicians and other vendors of inpatient hospital services under parts 9505.1750 to 9505.2150.

E. If an inpatient hospital service is not medically necessary, payment for a service not medically necessary shall be denied to the vendor of the service except as provided in items A and B.

**Subp. 12. Appeal of withdrawal of admission certification.** The withdrawal of admission certification may be appealed to the medical review agent through the reconsideration process in subpart 9.

**Subp. 13. Information used for determination.** At any stage of the admission certification process, including reconsideration, the person or persons making the determination may do so on the information provided by the admitting physician, or in their sole discretion may refer to additional facts submitted by the admitting physician.

#### **9505.0530 ADOPTION OF THE APPROPRIATENESS EVALUATION PROTOCOL BY REFERENCE.**

The most recent edition of the Appropriateness Evaluation Protocol of the National Institutes of Health is incorporated by reference. The book is available at the Health Data Institute, 7 Wells Avenue, Newton, Massachusetts. 02159, and it is also available through the Minitex interlibrary loan system. The book is subject to change.

#### **9505.0540 CRITERIA TO DETERMINE MEDICAL NECESSITY.**

The medical review agent shall follow the Appropriateness Evaluation Protocol in determining whether a recipient's admission is medically necessary, whether the inpatient hospital services provided to the recipient were medically necessary, whether the recipient's continued stay will be medically necessary, and whether all medically necessary inpatient hospital services were provided to the recipient.

## **Department of Labor and Industry Proposed Rules Governing Pipefitters' Fees**

### **Notice of Intent to Amend Rules without a Public Hearing**

Notice is hereby given that the State of Minnesota, Department of Labor and Industry (hereinafter "agency") proposes adoption of amendments to Minnesota Rules, part 5230.0100 without a public hearing. A public hearing will not be held on the proposed adoption of these amendments pursuant to Minn. Stat. § 16A.128 (Supp. 1983).

Persons interested in these amendments have 30 days to submit comments in support of or in opposition to the proposed amendments. Comment is encouraged. Each comment should identify the portion of the proposed amendment addressed, the reason for the comment, and any change proposed. The proposed amendment may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed language. Persons who wish to submit comments should submit such comments within 30 days following the publication of this notice to:

Georgiana Henning  
Department of Labor and Industry  
444 Lafayette Road  
St. Paul, Minnesota 55101  
(612) 296-2193

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## PROPOSED RULES

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Authority for the adoption of these amendments is contained in Minn. Stat. §§ 16A.128 and 326.46, 326.47 and 326.50 as amended by Minn. Laws 1984, ch. 481. Additionally, a statement of need and reasonableness that describes the need for and the reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and is available from Ms. Henning upon request.

The proposed amendments will have an impact on small business. Small businesses, like large businesses, will have to purchase a permit and pay inspection fees to construct or install high pressure piping systems. The permit fee is a flat fee and is the same for all businesses. The inspection fee is a fee based on the cost of bids awarded. The inspection fee will be proportionate to the size of the project being built, which will evenly distribute the burden between large and small businesses. The fees for licensing pipefitters and pipefitter contractors are a codification of the statutory fees currently in effect and will not place an increased burden on small businesses.

Upon adoption of the final amendments without a public hearing, the proposed amendments, this notice, the statement of need and reasonableness, all written comments received and the final amendments as adopted will be delivered to the Attorney General for review as to legality and form to the extent that form relates to legality, the issue of substantial change, whether the agency has authority to adopt these amendments, and whether the record demonstrates a rational basis for the need for and reasonableness of the proposed amendments. Persons who wish to be advised of the submission of this material to the Attorney General should submit a written request for notification to Ms. Henning. The notification of submission to the Attorney General will state whether the proposed amendments have been modified.

A copy of the proposed amendments follows this notice in the *State Register*. Copies of the proposed amendments are also being mailed to all persons and groups who have requested that their names be placed on the list maintained by the Minnesota Department of Labor and Industry for that purpose pursuant to Minn. Stat. § 14.22 (1982) (as amended by Minn. Laws 1984, ch. 640, § 12).

Copies of this notice and the proposed amendments are available and may be obtained by contacting Ms. Henning.

October 26, 1984

Steve Keefe  
Commissioner  
Department of Labor and Industry

### Rules as Proposed

#### 5230.0100 FEES FOR EXAMINATIONS.

Fees shall be for the examination and to cover the cost of a license for the remainder of the calendar year in which the examination is taken or for which the application is made if the applicant qualifies for a license.

After February a license may be reinstated upon payment of the regular examination fee; however, the council may at its discretion require the applicant to be reexamined and pass an examination before being reinstated as a licensed steamfitter.

The fees for examination and license are as follows:

- A. pipefitter journey (examination and license), \$25;
- B. renewal of pipefitter journey license, \$15;
- C. contracting pipefitter (examination and license), \$75;
- D. renewal of contracting pipefitter license, \$60;
- E. contracting pipefitter-bond and insurance processing, \$25;
- F. temporary pipefitter license, \$25; and
- G. late fee, \$5.

Payment of all examination and license fees must accompany the application. There will be no refund of fees paid. All licenses, except the temporary pipefitter license, will expire December 31, but may be renewed upon application made the following January or February. Applications in February will be processed only upon payment of the late fee.

A temporary pipefitter license must be renewed every 12 months. An individual may not hold a temporary license for more than 36 months.

Any person, firm, or corporation that intends to construct or install power piping systems must file an application for a permit with the Department of Labor and Industry or with a municipality that is authorized by law to issue that type of permit. The department's fees for a permit to construct or install power piping systems are:

A. filing fee (application for permit), \$25; and

B. inspection fee, 0.005 of the first \$1,000,000, plus one-half mill of the amount over \$1,000,000 of the cost of bids awarded for the construction or installation of the power piping systems as defined under part 5230.0260.

## **Department of Labor and Industry**

### **Proposed Rules Governing Workers' Compensation; Medical Fees**

#### **Notice of Intent to Admopt Amendments without a Public Hearing**

Notice is hereby given that the Department of Labor and Industry, Workers' Compensation Division, proposes to adopt the above-captioned amendments to Minn. Rules, parts 5221.0100-5220.3200 without a public hearing. The Department has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21-14.28 (1982) (as amended by Minn. Laws 1984, ch. 640, §§ 12-15).

Persons or groups interested in these amendments shall have 30 days to submit comments on the proposed amendments. Comments in support of or in opposition to the proposed amendments are encouraged. Each comment should identify the portion of the proposed amendments addressed, the reason for the comment, and any change proposed. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change in the proposed language.

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period. If a public hearing is required, the Department will proceed according to the provisions of Minn. Stat. §§ 14.131-14.20 (1982) (as amended by Minn. Laws 1984, ch. 640, §§ 7-11). Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Steve Keefe  
Commissioner, Department of Labor and Industry  
5th Floor, Space Center Bldg.  
444 Lafayette Road  
St. Paul, Minnesota 55101  
(612) 296-2342

Authority for the adoption of these amendments is contained in Minn. Stat. § 176.136, subd. 1 (1982). A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments, identifies the data and information relied upon to support the proposed amendments and assesses the impact of the proposed amendments on small business and on local public bodies has been prepared and is available from the Commissioner upon request at the above address.

Upon adoption of the final amendments without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written comments and requests for hearing received, and the final amendments as adopted, will be delivered to the Attorney General. The amendments will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the agency's authority to adopt the amendments and the existence of a rational basis for the need for and reasonableness of the proposed amendments. Persons who wish to be notified of the submission of this material to the Attorney General, including modifications to the amendments as originally

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# PROPOSED RULES

proposed, or who wish to receive a free copy of the final amendments as adopted, should submit a written request to the Commissioner at the above address.

The text of the proposed amendments follows this notice.

October 26, 1984

Steve Keefe  
Commissioner, Department of  
Labor and Industry

## Rules as Proposed

### 5221.2900 CHIROPRACTORS.

**Subpart 1. and 2.** [Unchanged.]

**Subp. 3. Radiology.** The following codes, service descriptions, and maximum fees apply to radiology services, and include both the technical and professional (interpretive) components of the service.

Code	Service	Maximum Fee
Chest		
71010	Radiologic examination, chest; (single view, posteroanterior)	\$ 25.00
Spine and Pelvis		
72010	Radiologic examination, spine, entire, survey study (14 × 36, anteroposterior and lateral)	<del>\$ 50.00</del> 90.00
72040	Radiologic examination, spine, cervical; limited (anteroposterior and lateral)	<del>30.00</del> 44.00
72050	comprehensive (minimum of four views)	<del>48.00</del> 90.00
72052	comprehensive (minimum of seven views including flexion and extension)	<del>39.00</del> 125.00
72070	Radiologic examination, spine; thoracic, (anteroposterior and lateral)	39.00
72080	thoracic, limited (anteroposterior and lateral)	35.00
72090	scoliosis study, comprehensive	34.00
72100	Radiologic examination, spine; lumbar, limited (anteroposterior and lateral)	<del>40.00</del> 56.00
72110	lumbosacral, comprehensive (minimum of five views)	<del>60.00</del> 100.00
72120	Radiologic examination, spine, lumbosacral, bending views only (minimum of four views)	40.00
72170	Radiologic examination, pelvis; limited (minimum of two views)	40.00
Upper Extremities		
73020	Radiologic examination, shoulder; limited (one projection)	\$ 25.00
73030	comprehensive, complete study	30.00
73070	Radiologic examination, elbow; limited (anteroposterior and lateral)	25.00
73100	Radiologic examination, wrist; limited (anteroposterior and lateral)	30.00
73120	Radiologic examination, hand	25.00
Lower Extremities		
73500	Radiologic examination, hip; limited (one view)	\$ 25.00
73560	Radiologic examination, knee; limited (two views)	30.00
73570	Radiologic examination, knee; comprehensive (minimum of three views)	35.00
73600	Radiologic examination, ankle; limited (two views)	30.00
73610	comprehensive (minimum of three views)	55.00
73620	Radiologic examination, foot; limited (two views)	25.00
73630	complete routine study (minimum of three views)	35.00
Miscellaneous		
76140	Consultation on x-ray examination made elsewhere, written report	\$ 25.00

**Subp. 4.** [Unchanged.]

## **Department of Natural Resources**

### **Proposed Rules Relating to Snowmobiles, Makers Identification Number**

#### **Notice of Intent to Adopt Rule Amendment without a Hearing**

Notice is hereby given that the State Department of Natural Resources is proposing to adopt the above entitled amendment without a public hearing. The Commissioner of Natural Resources has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow procedures set forth in Minn. Stat. §§ 14.21-14.28.

The change will allow manufacturers to affix the Vehicle Identification Number to new snowmobiles by means of a stamped plate. Present regulations require stamping this number onto the track tunnel, which adds cost to manufacturing those vehicles to be sold in Minnesota. This is due to the fact there are only three states in the nation that still require stamping on the track tunnel. The present rule can be found in 6 MCAR § (1.0051-1.0059), and the rule specifically in question is found in 1.0057 c.1.

Persons interested shall have 30 days to submit comments on the proposed amendments. The proposed amendments may be modified prior to final adoption of modifications are supported by the data and views submitted to the Department of Natural Resources and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will not be held. Identification of the particular objection, the suggested modifications, and the reasons or data relied upon to support the suggested modifications are desired. In the event a public hearing is required, the Department will proceed according to the provisions of Minn. Stat. §§ 14.13-14.20.

Persons who wish to submit comments or a written request for a public hearing, or persons who wish to receive a copy of this notice and/or a copy of the proposed amendment, should address their correspondence to:

Gordon Kimball, Trails Project Coordinator  
Trails & Waterways Unit  
Trails Operations Section  
Department of Natural Resources  
Box 52—Centennial Building  
Saint Paul, MN 55155-1679

The Department's authority to adopt the rules is contained in Minn. Stat. § 84.86. A statement that describes the need for the reasonableness of the proposed amendment is available from the Department of Natural Resources upon request.

Upon adoption of the final amendment without a public hearing, the proposed amendment, this notice, the statement of need and reasonableness, all written comments received, and the final amendment as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final amendment as proposed for adoption, should submit a written request to the above address.

Please be advised that Minn. Stat. Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. Minn. Stat. § 10A.01, subdivision 11 defines a lobbyist as any individual: a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spend more than five hours (5) in any month or more than \$250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or b) who spends more than \$250.00, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative administrative action by communicating or urging others to communicate with public officials. The statutes provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155-1679, telephone (612) 296-5615.

October 4, 1984

Joseph N. Alexander, Commissioner  
Department of Natural Resources

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# PROPOSED RULES

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## Rule as Proposed

### 6100.5700 REQUIRED EQUIPMENT.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Maker's permanent identification number.** All snowmobiles made after June 30, 1972, and sold in Minnesota shall bear the maker's permanent identification number so placed and of such size as follows:

A. be stamped into the right outside vertical surface of the track tunnel or on a plate affixed to the right vertical surface of the track tunnel in an area within 12 inches of the rearmost edge of the track tunnel, or other approved location;

B. to D. [Unchanged.]

Subp. 4. and 5. [Unchanged.]

## Board of Pharmacy

### Proposed Rules Relating to the Board of Pharmacy

#### Notice of Intent to Amend and Adopt Rules without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Board of Pharmacy proposes to adopt the above-entitled rules changes without a public hearing unless twenty-five or more persons submit written requests for a public hearing. The Board has determined that the proposed changes will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. section 14.21-14.28.

Persons interested in these rules have thirty (30) days to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. If twenty-five or more persons submit a written request for a public hearing within the thirty day comment period, a public hearing will be held. If a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14 to 14.18 and Laws 1984, Chapter 640, Sections 7, 8, 9, 10 and 11. The proposed rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

David E. Holmstrom  
Executive Secretary  
Minnesota Board of Pharmacy  
717 Delaware St. SE #351  
Minneapolis, MN 55414  
Telephone (612) 623-5411

The statutory authority of the Board to make the proposed rules changes is contained in Minn. Stat. section 151.06, subd. 1(9).

If adopted, the proposed changes would clarify existing rules relating to controlled substances, would bring state controlled substance schedules into conformity with the federal schedules, and would implement license fee increases required to comply with Minn. Stat. 214.06. A copy of the proposed changes is attached to this notice. One additional, free copy is available from the Board upon request.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed changes and identifies the data and information relied upon to support the proposed changes has been prepared and is also available from the Board upon request.

Promulgation of the proposed rules changes will not result in the expenditure of public monies by local public bodies. The proposed changes will not affect small businesses.

Upon adoption of the final rules changes without a public hearing, the proposed changes, the notice, the Statement of Need and Reasonableness, all written comments received, and the final rules changes as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the

submission of this material to the Attorney General, or who wish to receive a copy of the final rules changes as proposed for adoption, should submit a written statement of such request to David E. Holmstrom.

August 20, 1984

Board of Pharmacy  
David E. Holmstrom  
Executive Secretary

### Rules as Proposed

#### 6800.0400 ANNUAL LICENSE RENEWAL DATE AND FEES.

Each pharmacy license shall expire on June 30 of each year and shall be renewed annually by filing an application ~~therefor for license renewal~~, on or before June 1 of each year, together with a fee of ~~\$75~~ \$90. Renewal applications received on or after July 1 ~~shall be~~ are subject to a late filing fee of ~~\$20~~ \$25 in addition to the renewal fee.

#### 6800.1000 ANNUAL RENEWAL, FEES, AND POSTING.

Each pharmacist license shall expire on March 1 of each year and shall be renewed annually by filing an application ~~therefor for license renewal~~ on or before February 1 of each year, together with a fee of ~~\$25~~ \$50. ~~Beginning January 1, 1978, said fee shall be \$35.~~ Any pharmacist license renewal application submitted after March 1 shall be subject to a late filing fee of \$15 ~~\$25~~ in addition to the renewal fee.

Each pharmacist shall post his license or renewal thereof in a conspicuous place within the pharmacy in which he is practicing his profession. For community pharmacies, this place shall be a place which is readily visible to the public.

#### 6800.1100 APPLICATIONS FOR LICENSURE.

**Subpart 1. Submitting.** Applicants for licensure by examination shall submit a completed application for examination including affidavits of internship, a copy of applicant's birth certificate, and a recent photograph. All applicants shall show evidence of graduation with a bachelor of science degree or doctor of pharmacy degree, as the first professional undergraduate degree in pharmacy, from a college of pharmacy or a department of pharmacy of a university approved by the board and meeting at least the minimum standards set by the American Council on Pharmaceutical Education in the current edition of its accreditation manual. Such evidence shall be shown by submitting a final transcript showing the date on which degree was conferred. The above-listed documents together with a check for ~~\$75~~ \$90 must be submitted to the board at least 30 days prior to the examination.

**Subp. 2. Retaking exam.** Any applicant who has failed to pass the examination required by Minnesota Statutes, section 151.06, 151.07, 151.10, or 151.12, may retake such examination within the next ensuing 14 months, provided that no applicant who has failed in three examinations shall be permitted to take a further examination, except upon petition setting forth facts acceptable to the board. The applicant shall, at least 30 days before an examination, notify the board in writing of his intentions to retake the examination, certifying that information furnished on his original application remains true and correct, or reporting any changes therein, including additional education and experience, and shall submit a fee of ~~\$75~~ \$90 payable to the ~~state treasurer~~ Minnesota Board of Pharmacy. The board reserves the right to request a full and complete application.

**Subp. 3.** [Unchanged.]

### CONTROLLED SUBSTANCES

#### 6800.3500 LABELING OF CONTROLLED SUBSTANCES AND CERTAIN OTHER DRUGS.

All drugs administered systemically as controlled substances under Minnesota Statutes, chapter 152 and parts 6800.4200 to 6800.4250, antihistamines, psychotherapeutic agents, and other drugs deemed appropriate in the professional judgment of the pharmacist and dispensed to or for an adult patient (other than an inpatient of a hospital or nursing home) shall be labeled according to the requirements of part 6800.3400 and in addition shall contain the following:

"Caution: Taking this drug alone or with alcohol may impair your ability to drive."

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# PROPOSED RULES

## 6800.4200 ~~CONTROLLED SUBSTANCES~~ INCLUSIONS AND EXCEPTIONS.

Subpart 1. and 2. [Unchanged.]

### 6800.4210 SCHEDULE I CONTROLLED SUBSTANCES.

The following items are listed in schedule I:

Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this part.

A. Opiates. Unless specifically excepted or unless listed in another schedule, any of the following substances opiates, including their isomers (whether optical, positional, or geometric), esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and or salts is possible within the specific chemical designation:

- (1) Acetylmethadol<sub>72</sub>;
- (2) Alfentanil;
- (3) Allyprodine<sub>72</sub>;
- (4) Alphacetylmethadol<sub>72</sub>;
- (5) Alphameprodine<sub>72</sub>;
- (6) Alphamethadol<sub>72</sub>;
- (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- (8) Benzethidine<sub>72</sub>;
- (9) Betacetylmethadol<sub>72</sub>;
- (10) Betameprodine<sub>72</sub>;
- (11) Betamethadol<sub>72</sub>;
- (12) Betaprodine<sub>72</sub>;
- (13) Clonitazene<sub>72</sub>;
- (14) Dextromoramide<sub>72</sub>;
- (15) Diampromide<sub>72</sub>;
- Diethylambutene<sub>72</sub>, (16) Diethylthiambutene;
- (17) Difenoxin<sub>72</sub>;
- (18) Dimenoxadol<sub>72</sub>;
- (19) Dimepheptanol<sub>72</sub>;
- Dimethylambutene<sub>72</sub>, (20) Dimethylthiambutene;
- (21) Dioxaphetyl butyrate<sub>72</sub>;
- (22) Dipipanone<sub>72</sub>;
- (23) Ethylmethylthiambutene<sub>72</sub>;
- (24) Etonitazene<sub>72</sub>;
- (25) Etoxidine<sub>72</sub>;
- (26) Furethidine<sub>72</sub>;

- (27) Hydroxypethidine;
- (28) Ketobemidone;
- (29) Levomoramide;
- (30) Levophenacymorphan;
- (31) Methyl substituted isomers of Fentanyl;
- (32) Morpheridine;
- (33) ~~Noracetylmethadol~~, Noracymethadol;
- (34) Norlevorphanol;
- (35) Normethadone;
- (36) Norpipanone;
- (37) Phenadoxone;
- (38) Phenampramide;
- (39) Phenomorphane;
- (40) Phenoperdine;
- (41) Piritramide;
- (42) Proheptazine;
- (43) Properidine;
- (44) Propiram;
- (45) Racemoramide;
- ~~Sufentanil~~;
- (46) Tilidine; and
- (47) Trimeperidine.

For the purposes of this item only, the term "isomer" includes the optical, positional, and geometric isomers.

B. Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Acetylcodone;
- (4) Benzylmorphine;
- (5) Codeine methylbromide;
- (6) Codeine-N-Oxide;
- (7) Cyprenorphine;

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# PROPOSED RULES

- (8) Desomorphine;
- (9) Dihydromorphine;
- (10) Drotebanol;
- (11) Etorphine (except hydrochloride salt);
- (12) Heroin;
- (13) Hydromorphanol;
- (14) Methyldesorphine;
- (15) Methylhydromorphine/Methyldihydromorphine;
- (16) Morphine Methylbromide;
- (17) Morphine Methylsulfonate;
- (18) Morphine-N-Oxide;
- (19) Myrophine;
- (20) Nicocodeine;
- (21) Nicomorphine;
- (22) Normorphine;
- (23) Pholcodine; and
- (24) Thebacon.

C. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their or which contains any of its salts, isomers (whether optical, positional, or geometric), and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Statutory Name	Some examples of common names, trade names, or names of products which contain a controlled substance
(1) 3, 4 Methylenedioxy Amphetamine	MDA
(2) 4 Bromo 2, 5 Dimethoxyamphetamine	
(3) 2, 5 Dimethoxyamphetamine	
(4) 4 Methoxyamphetamine	
(5) 5 Methoxy 3, 4 Methylenedioxy Amphetamine	MMDA
(6) Bufotenine	
(7) Diethyltryptamine	DET
(8) Dimethyltryptamine	DMT
(9) 3, 4, 5 Trimethoxy Amphetamine	TMA
(10) 4 Methyl 2, 5 Dimethoxyamphetamine	DOM, STP
(11) Ibogaine	
(12) Lysergie Acid Diethylamide	LSD
(13) Marijuana	
(14) Mescaline	
(15) N-ethylamphetamine	
(16) N-ethyl-1-phenyl-cyclohexylamine	
(17) N-ethyl-3-Piperidyl-Benzilate	JB318
(18) N-methyl-3-Piperidyl-Benzilate	JB336
(19) Psilocybin	
(20) Psilocyn	
(21) Tetrahydrocannabinols	THC

- (22) + [1(2Thienyl) Cyclohexyl]Piperidine  
 (23) + (1 phenyleyclohexyl) pyrrolidine

(1) 4-Bromo-2,5-Dimethoxyamphetamine

(2) 2,5-Dimethoxyamphetamine

(3) 4-Methoxyamphetamine

(4) 5-Methoxy-3,4-Methylenedioxyamphetamine

(5) 4-Methyl-2,5-Dimethoxyamphetamine

(6) 3,4-Methylenedioxy Amphetamine

(7) 3,4-Methylenedioxymeth-amphetamine

(8) 3, 4, 5-Trimethoxy Amphetamine

(9) Bufotenine

(10) Diethyltryptamine

(12) Ibogaine

(13) Lysergic acid diethylamide

(14) Marijuana

(15) Mescaline

(16) Parahexyl

(17) Peyote

Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or extracts

(18) N-ethyl-3-piperidyl Benzilate

(19) N-methyl-3-piperidyl Benzilate

(20) Psilocybin

(21) Psilocyn

(22) Tetrahydrocannabinols

Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activities such as the following: 1 cis or trans tetrahydrocannabinol, and their optic isomers; 6 cis or trans tetrahydrocannabinol, and their optical isomers; 3,4 cis or trans tetra hydrocannabinol, and its optic isomers (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

4-bromo-2,5-dimethoxy-a-methylphenethylamine;

4-bromo-2,5-DMA

2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA

4-methoxy-a-Methylphenethylamine;

paramethoxyamphetamine, PMA

MMDA

4-methyl-2,5-dimethoxy-a-methylphenethylamine;

"DOM"; and "STP"

MDA

MDMA

TMA

3-(b-Dimethylaminoethyl)-5-hydroxyindole;

3-(2-dimethylaminoethyl)-5-indolol; N,

N-dimethylserotonin;

5-hydroxy-N,N-dimethyltryptamine; mappine

N,N-Diethyltryptamine; DET DMT

7-Ethyl-6,6b,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrdo

[1', 2':1,2] azepino [5,4-b] indole; Tabernanthe iboga

LSD

3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyra

Synhexyl

JB-318

JB-336

THC

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## PROPOSED RULES

(23) Ethylamine analog of phencyclidine

N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE

(24) Pyrrolidine analog of phencyclidine

1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP

(25) Thiophene analog of phencyclidine

1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP

D. Peyote, providing. The listing of peyote as a controlled substance in schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the Native American Church; and members of the Native American Church, however, are required to obtain federal registration annually and to comply with all other requirements of law.

E. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Mecloqualone;

(2) Methaqualone.

F. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system including its salts, isomers, and salts of isomers:

(1) Fenethylamine;

(2) N-ethylamphetamine.

### 6800.4220 SCHEDULE II CONTROLLED SUBSTANCES.

The following items are listed in schedule II:

A. Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this part.

B. Substances, vegetable origin, or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:

Statutory Name

Some examples of common names, trade names, or names of products which contain a controlled substance.

(a) Raw opium

(b) Opium extracts

(c) Opium fluidextracts

(d) Powdered opium

(e) Granulated opium

(f) Tincture of opium

apomorphine

(g) Codeine

(h) Ethylmorphine

(i) Etorphine hydrochloride

(j) Hydrocodone

(k) Hydromorphone

(l) Metopon

(m) Morphine

(n) Oxycodone

(o) Oxymorphone

(p) Thebaine

Laudanum

Methylmorphine

Dionin

Dihydrocodeinone, Docodid, Hycodan

Dihydromorphone, Dilaudid

Chlor-Anodyne

Dihydrohydroxycodone, Percodan, Nucodan

Dihydrohydroxymorphinone, Numorphan

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subitem (1), except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, cocaine compound, derivative, or preparation of coca leaves and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy).

~~B. C. Opiates. Unless specifically excepted or unless listed in another schedule any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, or unless listed in another schedule, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:~~

Statutory Name	Some examples of common names, trade names, or names of products which contain a controlled substance.
(1) Alphaprodine	Nisentil
(2) Anileridine	Leritine
(3) Bezitramide	
(4) Bulk Dextropropoxyphene (nondosage forms)	
(5) Dihydrocodeine	Paracodin
(6) Dihydromorphinone	Dilaudid
(7) Diphenoxylate	
(8) Fentanyl	Sublimaze, Innovar
(9) Isomethadone	
(10) Levomethorphan	
(11) Levorphanol	Levo-Dromoran
(12) Metazocine	
(13) Methadone	Dolophine, Amidone, Adanon
(14) Methadone-Intermediate 4-cyano-2-dimethylamino-4, 4-diphenylbutane	
(15) Moramide-Intermediate 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid	
(16) Pethidine (meperidine)	Meperidine, Demerol,
(17) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpi- peridine	Isonipecaine; Mepadin, Mepergan
(18) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4- carboxylate	
(19) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine- 4-carboxylic acid	
(20) Phenazocine	Prinadol
(21) Piminodine	Alvodine
(22) Racemethorphan	
(23) Racemorphan	Dromoran
(24) Sufentanil	<u>Sufenta</u>

~~C. D. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:~~

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# PROPOSED RULES

Statutory Name	Some examples of common names, trade names, or names of products which contain a controlled substance.
(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;	Dexedrine, Dexamyl, Benzedrine, Raphetamine, Biphphetamine,
(2) Methamphetamine, its salts, <del>optical</del> isomers, and salts of its <del>optical</del> isomers;	Desoxyn, Methedrine, Drinalfa, Desoxyephedrine Hydrochloride, Syndrox, Efrogine, Norodin, Obedrin, Ambar
(3) Phenmetrazine and its salts;	Preludin
(4) Methylphenidate	Ritalin, Plimasin, Ritonic

~~D~~ E. Depressants, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) ~~Methaqualone: Sopor, Quaalude, Parest;~~
- (2) ~~Amobarbital: Amytal;~~
- (3) ~~Secobarbital: Seconal;~~
- (4) ~~Pentobarbital: Nembutal, Tuinal;~~
- (5) ~~Phencyclidine: Sernyl, Sernylar.~~

## Statutory Name

## Some examples of common names, trade names, or names of products which contain a controlled substance.

- (1) Amobarbital
- (2) Pentobarbital
- (3) Phencyclidine
- (4) Secobarbital

- Amytal  
Nembutal, Tuinal  
Sernyl, Sernylar  
Seconal

~~E~~ F. Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) Immediate precursor to amphetamine and methamphetamine:

## Statutory Name

## Some trade or other names

- (a) Phenylacetone

phenyl-2-propanone, P2P, benzyl methyl ketone, methyl benzyl ketone

- (2) Immediate precursor to phencyclidine (PCP):

- (a) 1-phenylcyclohexylamine
- (b) 1-piperidinocyclohexane carbonitrile (PCC)

## 6800.4230 SCHEDULE III CONTROLLED SUBSTANCES.

The following items are listed in schedule III:

A. Any material, compound, mixture, or preparation which contains any quantity of Amphetamine, its salts, optical isomers, and salts of its optical isomers; Phenmetrazine and its salts; Methamphetamine, its salts, isomers, and salts of isomers; Methylphenidate; and which is required by federal law to be labeled with either of the following symbols; C-III or III; Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this part.

B. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including its salts, isomers (whether optical, positional, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Statutory Name

Some examples of common names, trade names, or names of products which contain a controlled substance

- (1) Amphetamine, Methamphetamine, Methylphenidate and Phenmetrazine, when required by federal law to be labeled with either of the following symbols: C-III or III
- (2) Benzphetamine
- (3) Chlorphentermine
- (4) Clortermine
- (5) Phendimetrazine

- Didrex
- Pre-Sate
- Voranil
- Plegine, Stim-35, Melfiant, Barcarate

C. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

Statutory Name

Some examples of common names, trade names, or names of products which contain a controlled substance

- (1) Any compound, mixture, or preparation containing:
  - (a) Amobarbital;
  - (b) Secobarbital;
  - (c) Pentobarbital, or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.
- (2) Any suppository dosage form containing:
  - (a) Amobarbital;
  - (b) Secobarbital;
  - (c) Pentobarbital, or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.

Some examples of common names, trade names, or names of products which contain a controlled substance

Butobarbital, Vinbarbital, Delvinal, Talbutal, Lotusate, Pentothal, Brevital

Statutory Name

- (3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically excepted or listed in other schedules:
- (4) Chlorhexadol
- (5) Glutethimide
- (6) Lysergic acid
- (7) Lysergic acid amide
- (8) Methyprylon
- (9) Sulfondiethylmethane
- (10) Sulfonethylmethane
- (11) Sulfonmethane

Doriden

Noludar

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# PROPOSED RULES

C. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

Statutory Name	Some examples of common names, trade names, or names of products which contain a controlled substance
(1) Benzphetamine	Didrex
(2) Chlorphentermine	Pre-Sate
(3) Clortermine	Voramil
(4) Phendimetrazine	Plegine, Stim-35, Melfiant, Bacarate
D. Nalorphine	Nalline

E. Narcotic Drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities of any of the following narcotic drugs, or any salts thereof as follows:

(1) Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium: Copavin.

(2) Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts: Cheracol, Elixir, Terpin Hydrate and Codeine, Cosadein, Prunicodeine, Robitussin A.C.

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts: Ambenyl, Tussend, Hycomine, Tussionex.

(5) Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts: Cidicol.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts: Paregoric, Camphorated Opium Tincture.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

## 6800.4240 SCHEDULE IV CONTROLLED SUBSTANCES.

The following items are listed in schedule IV:

A. Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this part.

B. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as follows:

(1) Not more than one milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane), for example, Darvon, Darvocet.

C. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

# PROPOSED RULES

## Statutory Name

Some examples of common names, trade names, or names of products which contain a controlled substance.

~~A.~~ (1) Alprazolam

~~B.~~ (2) Barbitol

(3) Bromazepam

(4) Camazepam

~~C.~~ (5) Chloral betaine

~~D.~~ (6) Chloral hydrate

~~E.~~ (7) Chlordiazepoxide

(8) Clobazam

~~F.~~ (9) Clonazepam

~~G.~~ (10) Clorazepate

(11) Clotiazepam

(12) Cloxazolam

(13) Delorazepam

~~H.~~ (14) Diazepam

~~I.~~ Diethylpropion

(15) Estazolam

~~J.~~ (16) Ethchlorvynol

~~K.~~ (17) Ethinamate

~~L.~~ Fenfluramine

(18) Ethyl Loflazepate

(19) Fludiazepam

(20) Flunitrazepam

~~M.~~ (21) Flurazepam

~~N.~~ (22) Halazepam

(23) Haloxazolam

(24) Ketazolam

(25) Loprazolam

~~O.~~ (26) Lorazepam

~~P.~~ Mazindol

(27) Lormetazepam

~~Q.~~ (28) Mebutamate

(29) Medazepam

~~R.~~ (30) Meprobamate, except when in combination with the following drugs in the following or lower concentrations:

conjugated estrogens 0.4 mg

tridihexethyl chloride 25 mg

pentaerythritol tetranitrate 20 mg

~~S.~~ (31) Methohexital

~~T.~~ (32) Methylphenobarbital

(33) Nimetazepam

(34) Nitrazepam

(35) Nordiazepam

~~U.~~ (36) Oxazepam

Xanax

Barbitone

Beta-Chlor

Noctec, Somnos

Librium, Libritabs

Clonopin

Tranxene

Valium

~~Tenuate, Tepanil~~

Placidyl

Valmid

~~Pondamin~~

Dalmane

Paxipam

Ativan

~~Sanorex~~

Equanil, Miltown, Equagesic,

Equalysen

Brevital

Mebral, Mephobarbital

Serax

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# PROPOSED RULES

(37) Oxazolam

~~V.~~ (38) Paraldehyde

~~W.~~ Pemoline

~~X.~~ Pentazocine

~~Y.~~ (39) Petrichloral

~~Z.~~ (40) Phenobarbital

~~AA.~~ Phentermine

~~BB.~~ Pipradrol

(41) Pinazepam

~~CC.~~ (42) Prazepam

~~DD.~~ Propoxyphene

~~EE.~~ SPA (1/1-Dimethylamino-1, 2-diphenylethane)

~~FF.~~ (43) Temazepam

(44) Tetrazepam

(45) Triazolam

Paral

Cylert

Talwin

Periclor

Luminal, Phenobarbitone, Eskabarb

Wilpo, Fastin, Ionamin

Centrax

Darvon

Restoril

Halcion

D. Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, (whether optical, positional, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

Statutory Name

Some examples of common names, trade names, or names of products which contain a controlled substance

(1) Fenfluramine

Pondamin

E. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

Statutory Name

Some examples of common names, trade names, or names of products which contain a controlled substance

(1) Diethylpropion

Tenuate, Tepanil

(2) Mazindol

Sanorex

(3) Pemoline (including organometallic complexes and chelates thereof)

(4) Phentermine

Wilpo, Fastin, Ionamin

(6) Pipradrol

(6) SPA ((-)-1-dimethylamino-1, 2-diphenylethane)

F. Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts:

Statutory Name

Some examples of common names, trade names, or names of products which contain a controlled substance

(1) Pentazocine

Talwin

**6800.4250 SCHEDULE V CONTROLLED SUBSTANCES.**

The following items are listed in schedule V:

A. Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this part.

B. Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, or their salts calculated as the free anhydrous base or

alkaloid, in limited quantities as follows, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic ~~drug~~ drugs alone:

Statutory Names

Some examples of common names, trade names, or names of products which contain a controlled substance.

~~A.~~ (1) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

~~B.~~ (2) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

~~C.~~ (3) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

Lomotil

~~D.~~ (4) Not more than 15 milligrams of anhydrous morphine per 100 milliliters or per 100 grams.

Parapectolin, Donnagel P.G.

~~E.~~ Loperamide

Imodium

**RENUMBERING.** Renumber the Minnesota Rules parts in column A as the Minnesota Rules parts in column B.

<u>A</u>	<u>B</u>
<u>6800.0900</u>	<u>6800.2250</u>
<u>6800.1000</u>	<u>6800.1150</u>
<u>6800.1100</u>	<u>6800.1250</u>
<u>6800.1200</u>	<u>6800.1300</u>
<u>6800.2000</u>	<u>6800.2150</u>
<u>6800.2100</u>	<u>6800.1050</u>
<u>6800.2200</u>	<u>6800.0950</u>
<u>6800.3500</u>	<u>6800.4150</u>
<u>6800.3600</u>	<u>6800.3550</u>
<u>6800.3700</u>	<u>6800.3650</u>
<u>6800.3800</u>	<u>6800.3750</u>
<u>6800.3900</u>	<u>6800.3850</u>
<u>6800.4000</u>	<u>6800.3950</u>
<u>6800.4100</u>	<u>6800.4050</u>

## Pollution Control Agency

### Proposed Rules Governing Hazardous Waste Fees

#### Notice of Intent to Adopt Amendments to Rules without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt without a public hearing, in accordance with the provisions of Minn. Stat. § 16A.128 (Supp. 1983), amendments to 6 MCAR §§ 4.9701-4.9706 (Minnesota Rules Parts 7046.0010-7046.0070, Hazardous Waste Facility and Generator Fee Rules. In accordance with Minn. Stat. § 16A.128 (Supp. 1983), the Agency will follow the procedure for non-controversial rules set out in Minn. Stat. §§ 14.22 to 14.28 (Supp. 1983), with the exception that no public hearing will be held in the event that twenty-five or more requests for hearing are received.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## PROPOSED RULES

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The proposed rule amendments are authorized by Minn. Stat. § 116.12 (Supp. 1983). A copy of the proposed rules is enclosed. One free copy of the rules is available on request from the Agency. Please contact the person whose name and address appears below.

The Agency has prepared a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule amendments and identifies the data and information relied upon by the Agency to support the proposed amendments. Copies of the Statement of Need and Reasonableness and of the proposed amendments are available and may be obtained by contacting:

Stephen Lee  
Minnesota Pollution Control Agency  
1935 West County Road B-2  
Roseville, Minnesota 55113  
Telephone: (612) 297-1779

Interested persons have until 4:30 p.m. on Monday, December 17, 1984, to submit comments on the proposed rule amendments. Comments should be submitted to Stephen Lee at the address stated above. The proposed rule amendments may be modified if the data and views received by the Agency before the end of the comment period warrant modification and the modification does not result in a substantial change in the proposed amendments.

One of the modifications which the Agency will be considering during the comment period is an exemption from the payment of initial generator fees for certain classes of non-metropolitan generators. The exemption is being considered for generators of small quantities of hazardous waste whose wastes are being recycled off-site, such as dry cleaners, automobile service stations, and small automobile repair facilities. The Agency encourages interested persons to submit comments on any adverse effects which the proposed rule amendments would have on the recycling practices of these generators.

Upon adoption of the amendments by the Agency Board, the rules as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rule as adopted will be sent to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final amendments as adopted, should submit a written statement of such request to Stephen Lee at the address previously stated.

You are hereby advised, pursuant to Minn. Stat. § 14.115 (Supp. 1983), "Small business considerations in rulemaking," that the proposed rule amendments may have an impact on some small businesses in Minnesota. The amendments will raise annual facility fees by approximately 485 percent. Some small businesses may operate facilities subject to these fees. Many generators of hazardous waste may qualify for small business status. If waste generation and management practices remain the same, the fee increases will be approximately 70 percent for generators located in non-metropolitan area counties and 35 percent for generators located in metropolitan counties.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (Supp. 1983) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$250 not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute contains certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Thomas J. Kalitowski  
Executive Director

### Rules as proposed

#### 7046.0010 DEFINITIONS.

Subpart 1. to 4. [Unchanged.]

Subp. 4a. Free liquids. "Free liquids" means liquids that readily separate from the solid portion of the waste under ambient temperature and pressure.

Subp. 5. to 17. [Unchanged.]

**Subp. 17a. Response action.** "Response action" means removal or remedial action taken according to the provisions of the Environmental Response and Liability Act, Minnesota Statutes, sections 115B.01 to 115B.24, or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law Number 96-510.

Subp. 18. to 24. [Unchanged.]

**7046.0020 HAZARDOUS WASTE FACILITY FEES.**

**Subpart 1. Fee schedule for five-year permits.** A facility owner or operator who seeks a five-year permit shall remit fees as follows: A person applying for issuance or reissuance of a five-year permit for a hazardous waste facility shall remit the permit application fee or permit reissuance fee given in item A or B. A person who owns or operates a hazardous waste facility that is in operation on July 1 in any year shall remit the annual facility operator's fee for that fiscal year.

	Permit Application Fee	Annual Facility Operator's Fee		Permit Reissuance Fee
<b>A. Storage</b>				
Tanks and containers indoors				
Total capacity greater than 550 gallons	\$ 750	225	<u>1,100</u>	\$ 375
Total capacity 550 gallons or less	500	400	<u>485</u>	250
Tanks and containers outdoors				
Total capacity greater than 550 gallons	<del>1,500</del>	450	<u>2,200</u>	750
Total capacity 550 gallons or less	1,000	480	<u>875</u>	500
Piles	4,500	<del>1,300</del>	<u>6,300</u>	2,250
Surface impoundment	7,500	<del>1,300</del>	<u>6,300</u>	3,750
<b>B. Disposal and treatment</b>				
Surface impoundment	9,000	<del>1,800</del>	<u>8,700</u>	4,500
Treatment (not otherwise specified <u>including open burning</u> )	9,000	900	<u>4,400</u>	4,500
Thermal treatment (not including <u>open burning</u> )	22,500	<del>3,150</del>	<u>15,300</u>	11,250
Land treatment	22,500	<del>3,150</del>	<u>15,300</u>	11,250

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# PROPOSED RULES

Land disposal (includes surface impoundments in which waste remains after closure)	22,500	<del>3,150</del>	<u>15,300</u>	11,250
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Subp. 2. [Unchanged.]

**Subp. 3. Combination facilities.** An application fee for a facility consisting of several treatment, storage, or disposal functions must be calculated according to the following schedule for application fees and annual operator's fees:

Facility Description	Fee Calculation	Permit Reissuance Fee
A. Thermal treatment + treatment + storage	Thermal treatment + 0.2 × fee for treatment + 0.2 × fee for storage	All facilities 50 percent of application fee as calculated according to schedule
B. Disposal + storage	Disposal + 0.2 × fee for storage	
C. Thermal treatment + storage	Treatment + 0.2 × fee for storage	
D. Disposal + thermal treatment	Disposal + 0.2 × fee for thermal treatment	
E. Thermal treatment + disposal + treatment + storage	Disposal + 0.8 × fee for thermal treatment + 0.2 × fee for treatment + 0.2 × fee for storage	
F. Disposal + land treatment	Disposal + 0.8 × fee for land treatment	
G. Land treatment + storage	Land treatment + 0.2 × fee for storage	
<u>H. Treatment + storage</u>	<u>Treatment + 0.2 × fee for storage</u>	

Subp. 4. [Unchanged.]

**Subp. 5. Payment schedule.** Fees must be made payable to the state treasurer and submitted to the director as follows:

A. ~~For facilities which have submitted the part B application as described in Code of Federal Regulations, title 40, parts 122 and 264 prior to February 6, 1984, the owner or operator shall remit payment of the appropriate fees within 60 days of February 6, 1984, provided permits have not been issued as of February 6, 1984.~~

~~B.~~ B. For facilities which have not submitted the part B application, The owner or operator of a facility shall remit the permit application fee when he or she submits the application or facility plans and specifications for a new facility.

~~C.~~ B. The owner or operator shall submit the annual facility operator's fee not later than June 30 of each year.

~~D.~~ C. Permit reissuance fees must be submitted with the application for permit reissuance.

**Subp. 6. Failure to submit fees.** Failure to submit fees by the required date results in the following penalties:

A. A facility permit application submitted without the facility application fee is incomplete. The director shall suspend further processing of the permit application until the appropriate fee is received by the director.

B. and C. [Unchanged.]

Subp. 7. [Unchanged.]

## 7046.0030 NONMETROPOLITAN AREA GENERATOR FEES.

**Subpart 1. Basis of fees.** The agency shall charge nonmetropolitan area generator fees that are based on the annual reports submitted by generators, disclosures, or and other appropriate information available to the agency.

## PROPOSED RULES

**Subp. 2. Small generator exemption.** Nonmetropolitan area generators that generate a total of less than the equivalent of ten gallons or 100 pounds of hazardous waste per year are exempt from the generator fee requirements of this part.

For purposes of this part, a conversion factor of one gallon of hazardous waste equals ten pounds of hazardous waste will be used.

**Subp. 2a. Retroactive fee collection.** Annual fees, generator surcharges, and initial fees must be paid by generators for each fiscal year beginning July 1, 1983, for those years in which the generator generated hazardous wastes according to the fee schedules in effect for each of those fiscal years.

**Subp. 3. Initial fees.** Initial fees must be paid by a nonmetropolitan generator who is a new generator after ~~the effective date of parts 7046.0010 to 7046.0070~~ February 5, 1984, or who has failed to submit a disclosure prior to July 1, 1983, or who has added a waste not previously listed on a disclosure.

Initial fees for nonmetropolitan area generators are as follows:

A. For unsewered liquid waste, the initial fee is ~~\$60~~ \$100 plus ~~\$40~~ \$50 for each additional waste stream over one.

B. For sewered liquid waste, the initial fee is ~~\$30~~ \$40.

C. For unsewered solid waste, the initial fee is ~~\$60~~ \$100 plus ~~\$40~~ \$50 for each additional waste stream over one.

**Subp. 4. Fee for previously unreported waste.** If a generator adds a waste that has not been previously reported to the agency, the generator shall pay a fee of \$40 to the agency for each new waste stream had filed a disclosure and had been producing a waste that was not listed on the disclosure, the generator shall pay a fee of \$40 plus the annual fees and surcharges according to the fee schedules in effect for each year in which that waste had been produced.

**Subp. 4a. Fee for new process wastes.** If a generator had previously filed a disclosure and begins a new process that had not previously been listed on the disclosure, the generator shall pay a fee of \$40 to the agency for each new waste stream.

**Subp. 5. Annual fees.** Nonmetropolitan area generators shall submit annual fees as follows:

Waste Category

	11-55 gallons per year	56-500 gallons per year	501-1000 gallons per year	1000 + gallons per year
Unsewered liquid	<del>\$30</del> <u>\$40</u>	<del>\$60</del> <u>\$90</u> + <u>\$20</u> <u>\$25</u> for each additional waste stream <u>(greater than</u> <u>10 gallons or</u> <u>100 pounds)</u> over one	<del>\$90</del> <u>\$130</u> + <u>\$20</u> <u>\$25</u> for each additional waste stream <u>(greater than</u> <u>10 gallons or</u> <u>100 pounds)</u> over one	<del>\$90</del> <u>\$130</u> + <u>\$20</u> <u>\$25</u> for each additional waste stream <u>(greater than</u> <u>10 gallons or</u> <u>100 pounds)</u> over one plus <del>\$12</del> <u>\$16</u> for each additional 1000 gallons.

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# PROPOSED RULES

Sewered liquid waste

All volumes—\$75 per year  
all waste streams  
11 or more total gallons of sewered waste—\$100 per year

Unsewered solid waste (solid waste reported in terms of volume, e.g. 55 gallon drums, will be converted to weight units by a conversion factor of 10 pounds per gallon reported)

100-550  
pounds per year

~~\$30~~ \$40

551-5000  
pounds per year

~~\$60~~ \$90 +  
~~\$20~~ \$25 for each  
additional waste  
stream (greater than  
10 gallons or  
100 pounds)  
over one

Over 5000  
pounds per year

~~\$90~~ \$130 +  
~~\$20~~ \$25 for each  
additional waste  
stream (greater than  
10 gallons or  
100 pounds)  
over one plus  
~~\$5~~ \$7 for each additional  
5000 pounds or  
fraction thereof

**Subp. 6. Payment schedule.** In the fiscal year ending June 30, 1984, A nonmetropolitan area generator shall submit fees within 60 days upon receipt of the notice from the director that the fees are due. Fees submitted later than 30 days after the due date are deemed late.

Following the first annual payment, a nonmetropolitan area generator shall remit fees according to the following schedule based on the "Standard Industrial Classification" (SIC) as designated in the Standard Industrial Classification Manual (1972), Executive Office of the President, Office of Management and Budget, United States Government Printing Office. If a generator has more than one SIC number, that number which occurs first in the table determines the date fees are due.

Standard Industrial Classification	Type of Activity	Date Due
29	Petroleum and coal	July †
31	Tanning	July †
33	Primary Metal	July †
36	Electric machinery	July †
49	Electric power generating	July †
80	Health services	July †
82	Education services	July †
91	Government	July †
26	Paper	October †
28	Chemicals	October †
34	Fabricated metal	October †
35	Machinery (except electrical)	October †
20	Food	January †
22	Textiles	January †
24	Lumber and wood	January †
27	Printing	January †
32	Stone, clay, and glass	January †
40	Railroads	January †
45	Airlines	January †
25	Furniture	April †
30	Rubber and plastic	April †
37	Transportation equipment	April †
38	Measuring instruments	April †
39	miscellaneous manufacturing	April †
51	Wholesale nondurables	April †
55	Automotive sales	April †
75	Automotive repair	April †
	All others not listed above	April †

A nonmetropolitan area generator shall submit a check for the required amount to the director, made payable to the state treasurer.

**Subp. 7. Failure to submit fees.** If a nonmetropolitan area generator fails to submit the required fees within 30 days of the due date, the generator shall pay a the fees plus late fee of ten percent of the annual fee and the unpaid penalty fees for each 30-day period or fraction that the fee remains unpaid, up to 90 days. The late fee for each of the three 30-day periods or fraction between the due date and 90 days beyond the due date is ten percent of the total of the annual fee. Beyond 90 days, the late fee for each 30-day period or fraction beyond 90 days is 15 percent of the annual fee and the unpaid penalty for each 30-day period or fraction that the fee remains unpaid.

If a nonmetropolitan area generator fails to submit the requested fees within 90 days of the due date, the generator becomes liable for reasonable additional expenses the agency incurs in collection of the fee, in addition to the fees and late fees. These additional expenses include but are not limited to additional agency staff expenses (on a per hour basis, including staff fringe benefits and indirect charges), mileage charges, litigation expenses (including the attorney general's expenses), and collection agency or other fees.

#### **7046.0040 GENERATOR SURCHARGE.**

**Subpart 1. In general.** All generators in Minnesota are subject to an annual surcharge equal to ~~17.5~~ 50 percent of the annual fee. Payment must be made as provided in subparts 2 and 3.

**Subp. 2. and 3.** [Unchanged.]

**REPEALER.** Minnesota Rules, part 7046.0050, subpart 1 is repealed.

## **ADOPTED RULES**

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

## **Housing Finance Agency**

### **Adopted Rules Amending the Solar Energy and Energy Conservation Bank Programs**

The rules proposed and published at *State Register*, Volume 9, Number 8, pages 378-379, August 20, 1984 (9 S.R. 378) are adopted as proposed.

## **Department of Human Services**

### **Adopted Emergency Rules Governing General Assistance**

The rule proposed and published at *State Register*, Volume 9, Number 10, pages 482-488, September 3, 1984 (9 S.R. 482) is adopted with the following modifications:

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# ADOPTED RULES

## Emergency Rule as Adopted

### 9555.3417 [Emergency] GENERAL ASSISTANCE.

**Subpart 1. Definitions.** The terms used in this part have the meanings given them.

A. The definitions in part 9555.3400 ~~[Emergency]~~ apply to this part.

D. ~~“Interim funds” means the total amount of general assistance provided during the period in which the general assistance recipient was also eligible for SSI.~~

~~E. “Other maintenance benefits” means maintenance benefits provided under law or rule pertaining to workers’ compensation, unemployment compensation, railroad retirement, veteran’s disability benefits, supplemental security income, social security disability insurance, or other maintenance benefits identified by the local agency for which the applicant or recipient is potentially eligible.~~

~~F. E. “Potentially eligible” means that the local agency has determined that the applicant or recipient appears to meet the eligibility requirements of another maintenance benefit program.~~

~~G. F. A “qualified provider” means the local agency, or:~~

(1) a nonprofit legal assistance organization;

(2) an agency that employs licensed practitioners or accredited counseling staff or staff with a master’s degree from an accredited program in social work, psychology, counseling, occupational therapy, or physical therapy;

(3) a private attorney at law; and

(4) another organization or person, ~~including private attorneys at law~~, determined by the local agency to have sufficient training or experience to be effective in assisting persons to apply for and establish eligibility for SSI benefits.

~~H. G. “SSI” means the supplemental security income program administered by the Social Security Administration.~~

**Subp. 2. Applicability.** This part establishes the rights and responsibilities of the Department of Human Services, local agencies, and recipients of general assistance concerning application for maintenance benefits from other sources, execution of an interim assistance authorization agreement, provision of special services to assist the applicant or recipient in applying for other maintenance benefits, and reimbursement of interim assistance and reimbursement for provision of special services. This part shall be read together and with parts 9555.3400 to ~~9555.3410 [Emergency]~~ 9555.3409 and 9500.0500 to 9500.0610. To the extent that this part conflicts with parts 9555.3400 to ~~9555.3410 [Emergency]~~ 9555.3409 or 9500.0500 to 9500.0610, this part shall prevail.

**Subp. 3. Screening requirement.** The local agency shall screen general assistance applicants or recipients in the following manner:

A. The department shall provide each local agency with initial training and information concerning other maintenance benefit programs. Following the initial training, the local agency shall determine the potential eligibility of each general assistance applicant or recipient for maintenance benefits from other sources. If the local agency determines that the person applicant or recipient is potentially eligible for another maintenance benefit, the local agency shall inform the person of his or her rights and responsibilities in accordance with subpart 4. The determination of a general assistance applicant’s potential eligibility for other maintenance benefits shall be made when application for general assistance is made. The determination of a general assistance recipient’s potential eligibility for other maintenance benefits shall be made no later than the semi-annual redetermination of eligibility for general assistance, or when the local agency determines that changes in the recipient’s circumstances, including eligibility for medical assistance, indicate potential eligibility for other maintenance benefits, whichever is earlier.

C. ~~A~~ An applicant or recipient who has been determined by the local agency to be potentially eligible for another maintenance benefit, and who has applied and has been found ineligible for that other maintenance benefit program, shall not be required to apply again for that other maintenance benefit program unless one of the following conditions is met:

**Subp. 4. Informing requirement.** Upon determining that the applicant or recipient is potentially eligible for another maintenance benefit program, the local agency shall provide the applicant or recipient with written and oral information concerning all of the following:

A. The requirement that the applicant or recipient apply for the other maintenance benefit program as in subpart 6, item A.

B. The requirement, if applicable, ~~to~~ that the applicant or recipient execute an interim assistance authorization agreement provided for in subpart 6, item H.

C. The requirement ~~to~~ that the applicant or recipient comply with those procedures necessary for the determination of eligibility or ineligibility for the other maintenance benefit program as in subpart 6, item F.

D. The requirement ~~to~~ that the applicant or recipient authorize the local agency or a qualified provider to exchange relevant information concerning the applicant or recipient with another maintenance benefit program office as in subpart 6, item C.

G. ~~Where to make~~ The address of the location at which application can be made for the other maintenance benefit program for which the general assistance applicant or recipient has been determined to be potentially eligible.

**Subp. 5. Referral requirement.** The local agency shall refer applicants or recipients to other maintenance benefit programs as follows:

B. ~~If~~ At the time that the applicant or recipient is determined to be potentially eligible for maintenance benefits from SSI, the local agency shall offer to the applicant or recipient the special services needed to assist him or her in applying for and obtaining SSI as in subpart 9, and shall furnish him or her with a list of qualified providers.

C. If the applicant or recipient is determined to be potentially eligible for maintenance benefits from SSI, the local agency shall refer him or her to the Social Security Administration local office to apply for SSI benefits. If the applicant or recipient at that time or at a later date elects to receive the special services in subpart 9 from a qualified provider other than the local agency, the local agency shall refer the applicant or recipient to the chosen provider and shall enter into a contract with that qualified provider for special assistance to the applicant applicants or recipient recipients in applying for and obtaining SSI.

D. Upon referral as in item C, the local agency shall promptly notify the Social Security Administration local office of the date of referral so that the local agency may determine the earliest potential date of eligibility for SSI for recovery of interim funds can be established.

**Subp. 6. Actions required of applicants or recipients.** Applicants or recipients must comply with the following:

C. An applicant or recipient who is referred to another maintenance benefit program as in subpart 5, item A or C, shall authorize the local agency or a qualified provider to exchange information concerning the applicant or recipient with that the other maintenance benefit program office. The information exchanged must be relevant to qualifying for benefits from the other maintenance benefit program.

D. For purposes of exchanging private or confidential information about a person for whom a qualified provider has contracted to provide special services, the qualified provider shall not be considered part of the welfare system under Minnesota Statutes, section 13.46, subdivision 1.

J. If, for reasons beyond his or her control, a recipient is unable to comply with the requirements of item A, C, F, or H, the recipient must inform the local agency within 60 days of the referral required in subpart 5 of his or her inability to comply within 30 days of the date of referral. The local agency must then attempt to resolve the circumstances which prevent the recipient from complying with the requirements. If the local agency and the recipient are unable to resolve the circumstances, the ~~elient~~ recipient shall be found to have good cause for failure to comply with the requirements.

**Subp. 7. Ineligibility.** The following conditions govern termination of general assistance eligibility for persons a recipient who, without good cause as in subpart 6, item J, ~~do~~ does not comply with the requirements of subpart 6.

A. ~~A recipient who, without good cause as in subpart 6, item J, fails to comply with the requirements of subpart 6, shall be found ineligible for general assistance. The local agency shall notify the recipient of its intent to terminate eligibility for general assistance.~~ Prior to terminating the eligibility of a recipient who fails to comply with the requirements of subpart 6, the local agency must provide the recipient with a second notification of the requirements with which he or she must comply and must offer assistance to overcome the circumstances which prevent compliance. The notice must be given or mailed to the recipient at least 30 days before reducing, suspending, or terminating the grant due to the recipient's failure to comply with subpart 6. The notice must:

- (1) be in writing on a form prescribed by the commissioner;
- (2) be mailed or given to the recipient not later than 30 days before the effective date of the action;

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## ADOPTED RULES

~~(3) clearly state what action the local agency intends to take, the reasons for the action, the right to appeal the action, and the conditions under which assistance can be continued should the recipient file an appeal; and~~

~~(4) state the requirements which the recipient must comply with in order to end the period of ineligibility; and~~

~~(5) notify the recipient of the continued availability of special assistance as in subpart 9 state the requirements which the local agency believes the recipient has not complied with and which must be complied with in order to avoid or end a period of ineligibility;~~

(2) clearly state what action the local agency intends to take if the recipient fails to comply with the stated requirements, the date of the action, the right to appeal the action, and the conditions under which assistance can be continued should the recipient file an appeal;

(3) offer assistance to resolve the circumstances or concerns which prevent the recipient from complying with the requirements;

(4) inform the recipient of the continued availability of special assistance as in subpart 9; and

(5) be in writing on a form prescribed by the commissioner.

B. Upon notification as in item A, the local agency shall offer the recipient assistance to meet the requirements A recipient who fails to comply with the requirements of subpart 6 specified in the notice in item A shall be ineligible for general assistance.

D. If the person is determined to be ineligible under item A B, the assistance standard applicable to the person's assistance unit must be based on the number of remaining eligible members of the assistance unit.

E. If the recipient complies with subpart 6 within the 30 days specified in the notice in item A, ~~no~~ a period of ineligibility shall not be imposed.

**Subp. 8. Appeals.** A recipient who is determined ineligible for general assistance under subpart 7 may appeal the determination. The appeal must be a written request for a hearing submitted to the department or to the local agency under Minnesota Statutes, section 256.045. If the recipient appeals on or before the effective date first day of the notice period of ineligibility for general assistance under subpart 7, item A C, the recipient shall continue to receive general assistance while the appeal is pending, provided that the recipient is otherwise eligible for general assistance. If the appeal is denied, the amount of general assistance paid to the recipient during the appeal process shall be recoverable from the recipient ~~or his or her estate~~ by the county or the state as a debt due the county or state or both in proportion to the contribution of each.

**Subp. 9. Special services.** Special services which assist a general assistance applicant or recipient to obtain SSI benefits for which reimbursement may be claimed under subpart 10 or 11 are:

D. provision of currently available medical, social, or vocational evidence or expert testimony currently available to the local agency which may substantiate the presence and severity of blindness or disability;

E. assistance in obtaining and using additional medical, social, or vocational evidence or expert testimony and assisting the applicant or recipient in cooperating with the Social Security Administration and its agents, procedures, and requirements;

H. if a local agency, developing preparation by the local agency of a contractual agreement with the qualified provider chosen by the applicant or recipient; and

I. other services to assist the person applicant or recipient in establishing eligibility for SSI benefits.

**Subp. 10. Reimbursement for interim assistance and special services.** The procedure for reimbursement for interim assistance and special services is as follows:

A. Upon determining SSI eligibility for a person who has completed an interim assistance authorization agreement, the Social Security Administration forwards the initial SSI payment to the local agency. Within ten days of receipt of the initial SSI payment, the local agency shall disburse to the recipient the amount of the differences between the initial SSI payment and the total amount of general assistance provided during for the period for which the initial SSI payment is made. From the interim available funds remaining after the disbursement to the recipient, the local agency:

(1) shall retain an amount equal to 25 percent of the general assistance paid to the assistance unit for the period for which the initial SSI payment has been made, based on state assistance standards, plus any excess paid to the assistance unit above the state assistance standard;

(2) subject to the provisions of subpart 11, item D, may retain, for provision of special services which result in the recipient being determined eligible for SSI, include the special services of subpart 9, items A to D an amount equal to an additional 25 percent of the general assistance paid to the assistance unit for the period for which the initial SSI payment has been made based on state assistance standards. Such special services must include the provisions of subpart 9, items A to D; and

(3) subject to the provisions of subpart 11, item D, may retain, in addition to the amounts claimed in subitems (1) and (2), reimbursement for actual reasonable fees, costs, and disbursements related to appeals and litigation and provision of special services under subpart 9 which result in the recipient being determined eligible for SSI.

B. The amount retained by the local agency as reimbursement for the provision of special services to an applicant or recipient shall not exceed the amount of interim funds available remaining after the disbursement is made to the recipient pursuant to item A.

C. The balance of the interim funds initial SSI payment which are is not retained by the local agency or paid to a another qualified provider as reimbursement for the provision of special services as in item A, subitems (2) and (3), pursuant to subpart 11 shall be forwarded promptly to the Department of Human Services.

**Subp. 11. Reimbursement to qualified providers under contract to provide special services.** Qualified providers of special services are reimbursed in the following manner:

A. The local agency shall by contract reimburse a qualified provider for the reasonable actual costs, fees, and disbursements including medical reports and expert testimony related to appeals and litigation and provision of the special services in subpart 9 to a an applicant or recipient as provided in subpart 9 referred by the local agency as in subpart 5, item C if the local agency has received the initial SSI payment for that the applicant or recipient.

B. In order to receive reimbursement for the costs, fees, and disbursements related to appeals and litigation and the provision of special services which assist a general assistance applicant or recipient to apply for and obtain SSI benefits as provided in subpart 9, the qualified provider shall must enter into a contract with the local agency and must provide one or more of the special services specified in subpart 9.

The contract shall:

(1) be on a form prescribed by the commissioner except that the local agency may add to or change the form in order to meet standard contracting procedures established by the county board; and

(2) include a provision that the qualified provider shall be reimbursed for the provision of special services under subpart 9 at the rate determined by the qualified provider, but not to exceed \$75 per hour of service; and

(3) except as provided in item E, specify that a qualified provider shall not be reimbursed for any part of his or her costs, fees, or disbursements unless the local agency has referred the recipient and has received the initial payment from SSI for the recipient served-; and

A qualified provider under contract with the local agency shall not receive reimbursement for services in excess of \$75 per hour.

(4) specify that a qualified provider shall must not require prepayment of any costs, fees, or disbursements from the applicant or recipient-; and shall

(5) specify that the qualified provider must agree that the reimbursement received under contract with the local agency constitutes full and complete payment for all services rendered-; and

(6) specify that when the qualified provider requests reimbursement from the local agency for the services provided under contract, the qualified provider must document the total number of hours of services provided to the recipient; and

(7) specify the conditions of subpart 12 concerning termination of special services and contracts.

C. When one or more qualified providers have provided special services to a an applicant or recipient, the total reimbursement made to the qualified providers shall not exceed the amount of interim funds retained by the local agency as in

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subpart 10, item A, subitems (2) and (3) unless the excess is expressly authorized ~~under contract~~ and provided only with local agency funds.

D. If more than one qualified provider provides the special services in subpart 9 to an applicant or recipient, the reimbursement to each qualified provider for his costs, fees, and disbursements shall be the amount derived by multiplying the total amount of ~~interim funds retained by~~ available to the local agency as in subpart 10, item A, subitems (2) and (3) by the qualified provider's reimbursement percentage. The qualified provider's reimbursement percentage is determined by dividing each qualified provider's total number of hours of special services by the total number of hours of special services provided by the local agency and all other qualified providers ~~under contract~~ who have under contract served the applicant or recipient.

E. The services in subpart 9, when provided during the six-month period prior to an application for general assistance referral of the applicant or recipient to a qualified provider, shall be reimbursed if the local agency determines that the services contributed substantially to the applicant's or recipient's obtaining SSI benefits unless the contracting procedures of the particular county prohibit such payment. The reimbursement shall be made only if ~~interim~~ funds remain after reimbursement for services rendered subsequent to the application for general assistance pursuant to item D.

F. ~~If the applicant or recipient and the local agency agree to terminate a contract with a qualified provider, the contract for special services for that applicant or recipient shall be terminated.~~

G. The local agency and a another qualified provider may agree through contract to jointly provide the special services of subpart 9.

**Subp. 12. Termination of special services and contracts.** Special services and contracts shall be terminated in the following manner:

A. If an applicant or recipient requests in writing that the local agency terminate the special services agreement with a qualified provider, the special services agreement for that applicant or recipient shall be terminated, and the local agency shall mail written notice of the termination to the qualified provider. The notice shall include a copy of the applicant's or recipient's written request for termination of the special services agreement. Termination of the agreement shall be effective three days after the date the notice is mailed. Services rendered by the qualified provider after the effective date of termination shall not be eligible for reimbursement under subpart 11, item A.

B. If a qualified provider elects to discontinue providing the special services in subpart 9 to a recipient, the following information must be provided in writing to the recipient and, if the qualified provider is not the local agency, to the local agency:

- (1) the precise status of the recipient's application for supplemental security income benefits;
- (2) any deadlines which must be met regarding the recipient's application for supplemental security income benefits;
- (3) the right of the recipient to choose another qualified provider, and that the local agency will enter into a contract for the provision of the special services in subpart 9 with the qualified provider if other than the local agency;
- (4) a list of qualified providers may be obtained from the local agency.

C. When the local agency terminates a contract with a qualified provider for good cause, the local agency shall mail written notice to the qualified provider and to the recipients being served by the qualified provider. The notice must specify the reason for termination of the contract. Termination of the contract shall be effective three days after the notice is mailed to the qualified provider. The local agency shall also furnish the recipient with a list of other providers qualified to provide the special services in subpart 9.

## Department of Human Services

### Adopted Emergency Rules Related to Special Needs Rate Exception for Very Dependent Persons with Special Needs

The rules proposed and published at *State Register*, Volume 9, Number 8, pages 379-387, August 20, 1984 (9 S.R. 379) are adopted with the following modifications:

**Rules as Adoped****9510.1020 [Emergency] DEFINITIONS.**

**Subp. 2. Case manager.** "Case manager" means the persons designated by the county to provide direct services to the client, which involve client participation. The services include client assessment and screening, developing individual service plans, arranging and coordinating services, monitoring and evaluating client progress, and assuring that clients' rights are protected has the meaning given it in parts 9525.0010 to 9525.0100 or their successor parts.

**Subp. 7. Equipment.** "Equipment" means ~~portable~~ aids designed to increase a client's independent functioning which are purchased for the client ~~and~~, remain the property of the client ~~and~~ can be moved with the client upon discharge.

**Subp. 10. Payroll-related costs.** "Payroll-related costs" means the employer's share of social security withholding taxes, workers' compensation insurance or actual cost if self insured, and state and federal unemployment compensation taxes or costs.

**9510.1030 [Emergency] APPLICABILITY AND PURPOSE.**

**Subpart 1. Applicability.** Parts 9510.1020 to 9510.1140 [Emergency] establish procedures for counties and providers to follow to seek authorization for a special needs rate exception for very dependent persons with special needs and establish procedures for determining the special needs rate exception payments for training and habilitation services and for intermediate care facilities for the mentally retarded. Parts 9510.1020 to 9510.1140 [Emergency] do not apply to persons with mental retardation who reside in a state hospitals hospital.

**Subp. 2. Purpose.** The purpose of the special needs rate exception is to provide to a specific client those services whose costs are not included in the per diem rate of the intermediate care facility for the mentally retarded or the per diem rate of the training and habilitation service. The special needs rate exception payment is intended to fund short-term special needs for a specific client and in order to prevent the placement or retention of the client in a state hospital. The special needs rate exception is only to be allowed after all other funding sources or alternatives have been exhausted.

**9510.1040 [Emergency] APPLICATION TO BE COMPLETED BY PROVIDER.**

**Subp. 2. Information about client's needs and methods used to address needs.** The provider must:

- C. describe the proposed staff intervention including:
- (1) the amount of staff or consultant time required;
  - (2) qualifications of the program staff or outside consultants providing the intervention;
  - (3) type of intervention;
  - (4) frequency of intervention;
  - (4) (5) intensity of intervention; and
  - (5) (6) duration of intervention;

**Subp. 4. Supporting documentation.** The provider shall submit with the application the following:

A. A copy of the individual program plan including the measurable ~~program~~ behavioral outcomes which ~~will~~ are anticipated to be achieved by the client as a result of the proposed staff intervention or the equipment.

D. Work papers showing the method used to determine the cost of the intervention identified in subpart 2, item E, including the hourly wage of ~~current~~ staff who will implement the intervention, the unit cost of consultation or training services, and the unit cost of equipment requested.

**9510.1050 [Emergency] COUNTY REVIEW OF PROVIDER'S APPLICATION.**

**Subp. 2. Client eligibility.** A client shall be eligible for a special needs rate exception if the client meets the criteria in items A to D:

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C. the client is mentally retarded according to the definitions in parts 9525.0010 to 9525.0100 or their successor parts or has related conditions defined in Code of Federal Regulations, title 42, section 435, and has at least one of the following characteristics:

**Subp. 3. General provider eligibility.** A provider shall be eligible for a special needs rate exception if the provider meets the following criteria:

C. the existing program or services offered by the provider cannot be modified to meet the client's needs within the provider's approved per diem rates, including any operating cost incentives or allowances. Amounts deposited in a funded depreciation account under 12 MCAR § 2.05304 [Temporary] C. shall not be affected by this item.

**Subp. 4. Availability of other resources.** The provider shall be eligible for a special needs rate exception only if the county determines that:

B. There are no other appropriate ICFs/MR training and habilitation services or other services located within a reasonable distance available to meet the person's needs within their current rates. To determine if a client should be placed in another ICF/MR training and habilitation service or other service is appropriate for the client, the case manager shall:

(2) Consider whether the location of the alternative ICF/MR training and habilitation service or other service will impair the current level of family involvement.

(3) Consider the length of time that the client will need the additional services.

### 9510.1060 [Emergency] COUNTY APPROVAL PROCESS.

**Subp. 4. Notification.** The county shall send the provider and the client written notice of the county's decision on the provider's application as soon as a decision is made or within 15 working days after receipt of the application, whichever occurs first. If the county denies the provider's application, the county shall notify the commissioner, provider, ~~and~~ client, and the client's legal representative of the reasons for the denial in writing. The notice of the denial must state the specific provisions of the provider's application on which the county based the denial.

### 9510.1070 [Emergency] COUNTY'S APPLICATION TO COMMISSIONER.

If the county approves the provider's application, the county shall apply to the commissioner for a special needs rate exception within 15 working days of the date of receipt by the county from the provider of a complete application and supporting documentation. To apply for a special needs rate exception, the county shall submit to the commissioner a copy of the provider's approved application and supporting documentation and the following documents:

G. a description of the proposed services to be provided by the day training and habilitation service and the ICF/MR and how the services will be coordinated by the county and the providers. If the special ~~need allowance~~ needs rate exception is not requested for both the day training and habilitation service and the ICF/MR, a written explanation must be provided by the county.

### 9510.1080 [Emergency] COMMISSIONER'S DETERMINATION.

The commissioner shall review the county application ~~for compliance with~~ to determine if the requirements in parts 9510.1050 [Emergency] and 9510.1070 9510.1020 to 9510.1140 [Emergency] are satisfied in determining whether to approve or deny an application for a special needs rate exception. The commissioner shall notify the county, provider, ~~and~~ the client ~~or~~, and the client's legal representative of the decision within ten working days of the date the commissioner receives a completed application from the county. The special needs rate exception, if approved by the commissioner, shall be effective as of the date the county submits a completed application to the commissioner. If the commissioner denies the application, the commissioner shall notify the county, provider, and client or client's representative of the reasons for the denial.

### 9510.1090 [Emergency] ESTABLISHING SPECIAL NEEDS RATE EXCEPTION PAYMENT.

**Subp. 2. Allowable costs.** Unless otherwise reimbursable by the Department of Vocational Rehabilitation or by direct payments under parts 9500.0750 to 9500.1080, the following costs, if approved by the commissioner in accordance with parts 9510.1020 to 9510.1140 [Emergency] and 12 MCAR § 2.05311 [Temporary] A., are allowable for purposes of establishing the special needs rate exception payment:

A. additional salary, employee benefits, ~~or~~ and payroll-related costs for direct care staff required to meet the client's needs as identified in the provider's application;

**Subp. 4. Limitation.** The combined per diem costs of training and habilitation services, ICF/MR services, and the special needs rate exception payment and any other special needs rate exception payments in effect for the same client, shall not exceed the medical assistance per diem cost of providing services to mentally retarded persons in state hospitals. For the purpose of determining this limitation, items A to F apply.

C. The special needs rate exception amount must not exceed the total allowable costs in subpart 2. If a special needs rate exception is necessary for a client in both the ICF/MR and the training and habilitation service program, ~~these~~ the amounts of both special needs rate exceptions must be combined. If the client is currently receiving a special needs rate exception, that amount must also be included.

**9510.1100 [Emergency] VARIANCE REQUEST.**

**Subpart 1. Variance request.** The county may request a variance from the commissioner to approve a provider application which exceeds the limit in part 9510.1090 [Emergency], subpart 4 by up to ~~ten~~ 15 percent, if the provider meets the criteria in subpart 2.

**Subp. 4. Review of variance request; notification.** The commissioner shall review the variance request with the county's application for the special needs rate exception payment. If the county's application meets all of the requirements in parts 9510.1020 to 9510.1140 [Emergency] except the limitation in part 9510.1090 [Emergency] subpart 4 and the provider is eligible to apply for a variance under subpart 2, the commissioner shall approve the request. If the commissioner denies the variance request, the commissioner shall notify the county, provider, ~~and client or,~~ and the client's legal representative of the reasons for the denial.

**9510.1110 [Emergency] EMERGENCY PROCEDURE.**

**Subp. 2. Emergency approval.** In an emergency, the county may approve the addition of staff necessary to intervene in the emergency without obtaining prior approval of a special needs rate exception from the commissioner, only staff costs shall be allowed under this part. In an emergency, the county shall:

A. notify the commissioner by telephone no later than the next working day and in writing within three working days of the client's situation, and state in the notice a description of the behaviors or medical condition requiring emergency intervention and the actions taken by the provider to control the behaviors:

**Subp. 3. Reimbursement for emergency services.** A special needs rate exception for the costs identified in part 9510.1090 [Emergency], subpart 2, item A, for staff approved in accordance with subpart 2 shall be reimbursable for a period not to exceed two weeks from the date ~~of the county's request~~ the county notifies the commissioner of the emergency. The provider shall submit ~~the an application required in subpart 2, item B~~ completed in accordance with parts 9510.1020 to 9510.1140 [Emergency], for continuation of the special needs rate exception for more than ~~ten working days~~ two weeks. The county shall notify the commissioner if the provider fails to submit the application required in subpart 2, item B, and the commissioner shall discontinue the emergency special needs rate exception payment.

**9510.1120 [Emergency] DURATION OF SPECIAL NEEDS RATE EXCEPTION.**

**Subp. 3. Terminations.** The commissioner may terminate the special needs rate exception prior to the date stated in the application upon recommendation by the county. The county may recommend termination if:

D. no progress has been made in rectifying the identified problem area. This item shall not apply to services provided to clients with degenerative diseases if the criteria in subitems (1) to (4) are met:

(4) the request for an application exception to this item has been reviewed and approved by the state medical review team and the state medical review team has verified that no progress in the identified problem area can be expected.

**9510.1130 [Emergency] RECORDS, REPORTS, AUDITS, AND REPAYMENT.**

**Subp 2. Reports.** The county shall submit items A and B to the commissioner.

A. A quarterly program and fiscal review of the overall effectiveness of the services to be provided under the special needs allowance unless the commissioner determines that a different schedule of reviews is needed to evaluate the success of the program or redetermine the special needs rate exception payment. The review must be submitted ~~within~~ no more than 30 days of after the end of each quarter in which a special needs rate exception is in place and must include:

(2) the client's progress in attaining the measurable ~~program goals~~ behavioral outcomes in the individual program plan for which the special needs rate exception was requested; and

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## ADOPTED RULES

### Department of Human Services Mental Health Bureau

#### Adopted Emergency Rules Relating to Medical Assistance Funding and Administration of Home and Community-Based Services for Persons Who Are Mentally Retarded

The rules proposed and published at *State Register*, Volume 9, Number 7, pages 317-327, August 13, 1984 (9 S.R. 317) are adopted with the following modifications:

#### Emergency Rules as Adopted

##### 9525.1800 [Emergency] DEFINITIONS.

**Subp. 8. Daily intervention.** "Daily intervention" means supervision, assistance, or training provided to a client in the client's residence by a provider or family member to help the client manage daily activities. To qualify as daily intervention the supervision, assistance, or training must be provided each day for more than 90 consecutive days.

**Subp. 10. Diversion.** "Diversion" means the act of ~~placing~~ providing a client with home and community-based services who would be placed in an intermediate care facility for the mentally retarded within one year if the home and community-based services were not provided.

**Subp. 11. Family.** "Family" means the client's biological parents, adoptive parents or stepparents, siblings, children, ~~and~~ or spouse.

**Subp. 12. Federal waiver application.** ~~"Federal waiver application" means the application, and all amendments to the application including any amendments made after the effective date of parts 9525.1800 to 9525.1930 [Emergency], submitted to the federal Department of Health and Human Services under United States Code, title 42, sections 1396 to 1396p, requesting a waiver of Title XIX of the Social Security Act requirements to allow the state to pay for home and community-based services for persons who are mentally retarded.~~

**Subp. 13. Fiscal year.** "Fiscal year" means the state's fiscal year from July 1 through the following June 30.

**Subp. 14. 13. Geographic region.** "Geographic region" means the economic development regions established by executive order of the governor in accordance with Minnesota Statutes, section 462.385, in effect on July 1, 1984.

**Subp. 15. 14. Home and community-based services.** "Home and community-based services" means the following services for persons who are mentally retarded ~~that are authorized under United States Code, title 42, sections section 1396 to 1396p et. seq., and authorized in the waiver granted by the federal United States Department of Health and Human Services: case management, respite care, homemaker, in-home family support services, supported living arrangements for children, supported living arrangements for adults, day habilitation, and minor physical adaptations to the home, as defined in part 9525.1860 [Emergency].~~

**Subp. 16. 15. Host county.** "Host county" means the county in which the home and community-based service is provided.

**Subp. 17. 16. Individual program plan.** "Individual program plan" has the meaning given it in parts 9525.0010 to 9525.0100 or their successor parts.

**Subp. 18. 17. Individual service plan.** "Individual service plan" has the meaning given it in parts 9525.0010 to 9525.0100 or their successor parts.

**Subp. 19. 18. Intermediate care facility for the mentally retarded or (ICF/MR).** "Intermediate care facility for the mentally retarded" or "ICF/MR" means a program licensed to serve persons who are mentally retarded under Minnesota Statutes, section 252.28, and a physical plant licensed as a supervised living facility under Minnesota Statutes, chapter 144, which together are certified by the Minnesota Department of Health as an intermediate care facility for the mentally retarded. Unless otherwise stated, the term ICF/MR includes state-operated and community-based facilities.

**Subp. 20. 19. Placement.** "Placement" means the act of ~~placing~~ providing a client who is discharged from an ICF/MR with home and community-based services.

**Subp. 21. 20. Primary caregiver.** "Primary caregiver" means the a person other than a member of the client's family who is responsible for the daily care assistance, supervision, or training of the client in the client's residence.

**Subp. 22. 21. Provider.** "Provider" means a person or legal entity providing home and community-based services according to parts 9525.1800 to 9525.1930 [Emergency].

**Subp. 23. 22. Room and board costs.** "Room and board costs" means costs associated with providing food, shelter, and personal needs items for clients.

**Subp. 24. 23. Screening team.** "Screening team" ~~has the definition given it in~~ means the team established under Minnesota Statutes, section 256B.092 to evaluate a person's need for home and community-based services.

**Subp. 25. 24. Service site.** "Service site" means the location at which home and community-based services are provided.

**Subp. 26. 25. Short term.** "Short term" means a ~~period~~ cumulative total of less than 90 24-hour days in a fiscal year.

**Subp. 26. Waiver.** "Waiver" means the application requesting a waiver of Title XIX of the Social Security Act requirements to allow the state to pay for home and community-based services for persons who are mentally retarded, and all amendments to the application including any amendments made after the effective date of parts 9525.1800 to 9525.1930 [Emergency], as approved by the United States Department of Health and Human Services under United States Code, title 42, section 1396 et. seq.

#### **9525.1810 [Emergency] PURPOSE AND APPLICABILITY.**

**Subpart 1. Purpose.** The purpose of parts 9525.1800 to 9525.1930 [Emergency] is to establish procedures ~~to fund~~ for providing and administering home and community-based services through the medical assistance program for eligible persons who are mentally retarded.

**Subp. 2. Applicability.** Parts 9525.1800 to 9525.1930 [Emergency] apply to ~~a county or all~~ counties administering medical assistance funds for home and community-based services for persons who are mentally retarded ~~and~~, to all providers that contract with a county to provide home and community-based services for persons who are mentally retarded, and to all subcontractors who contract with a provider to provide home and community-based services for persons who are mentally retarded.

**Subp. 3. Effect.** The entire application of parts 9525.1800 to 9525.1930 [Emergency] shall continue in effect only as long as the federal waiver from the federal United States Department of Health and Human Services is in effect in the state of Minnesota.

#### **9525.1820 [Emergency] ELIGIBILITY.**

**Subpart 1. Eligibility criteria.** A person is eligible to receive home and community-based services if the person meets all the criteria in items A to D and if home and community-based services may be provided in accordance with part 9525.1830 [Emergency]:

B. the person is determined to be mentally retarded in accordance with the definitions and procedures in parts 9525.0010 to 9525.0100 and their successor parts;

D. the screening team has determined that the person needs daily intervention and the person's individual service plan documents the need for daily intervention and specifies the services needed daily.

**Subp. 2. Medical assistance eligibility for children residing with their parents.** The county shall determine eligibility for medical assistance for a person under age 21 who resides with a parent or parents without considering parental income and resources if:

B. the person will be provided home and community-based services in accordance with part 9525.1830 [Emergency]; ~~and~~

C. the person would not be eligible for medical assistance if parental income and resources were considered; and

D. the commissioner has approved in writing a county request to suspend for the person the deeming requirements in Code of Federal Regulations, title 42, section 436.821 in accordance with the approved federal waiver application.

#### **9525.1830 [Emergency] PROVISION OF HOME AND COMMUNITY-BASED SERVICES.**

**Subpart 1. Conditions.** The county shall provide or arrange to provide home and community-based services to a person if the person is eligible for home and community-based services under part 9525.1820 [Emergency] and all the conditions in items A to F have been met:

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A. ~~the home and community-based services money allocated to the county by the commissioner is sufficient to pay the costs of providing~~ has determined that it can provide home and community-based services to the person within its allocation of home and community-based services money as determined under parts 9525.1890 [Emergency] and 9525.1910 [Emergency];

B. the screening team has ~~determined that recommended~~ home and community-based services are an appropriate alternative to instead of ICF/MR services for the person under parts 9525.0010 to 9525.0100 or their successor parts;

D. the person or the person's legal representative has agreed to the home and community-based services determined by the screening team to be appropriate for the person;

E. the county has authorized provision of home and community-based services to the person based on the goals and objectives specified in the person's individual service plan; and

**Subp. 2. Written procedures and criteria.** The county shall establish written procedures and criteria for making determinations under subpart 1, item A. The procedures and criteria must be consistent with requirements in parts 9525.1800 to 9525.1930 [Emergency], the waiver, federal regulations governing home and community-based services, and any requirements established by the commissioner for making determinations under subpart 1, item A.

### 9525.1840 [Emergency] PARENTAL CONTRIBUTION FEE.

**Subp. 2. In-home placements services.** Parents of clients under age 18 may be liable for a parental contribution fee determined according to Minnesota Statutes, section 256B.14, if the client is residing with a parent and the client's medical assistance eligibility for home and community-based services was determined without considering parental income or resources under part 9525.1820 [Emergency], subpart 2.

### 9525.1850 [Emergency] PROVIDER REIMBURSEMENT.

A provider may receive medical assistance reimbursement for home and community-based services only if the provider meets the criteria in items A to ~~D~~ E:

A. the provider has a current license or licenses for the specific home and community-based services as required under Minnesota Statutes or Minnesota Rules or, if no license is required, has received approval from the county to provide home and community-based services in accordance with Minnesota Statutes, sections 252.28 and 245.781 to 245.812;

B. the provider has a legally binding contract with the host county which complies with part 9525.1870 [Emergency];

C. the provider has been authorized to provide home and community-based services for the client by the county of financial responsibility;

D. the provider agrees to comply with the United States Code, title 42, sections 1396 et. seq. and regulations implementing those sections and with parts 9500.0750 to 9500.1080, 9505.1750 to 9505.2150, and 9525.1800 to 9525.1930 [Emergency]; and

~~D- E.~~ E. the provider is not the client's guardian or a member of the client's family. This item does not preclude the county from providing services if the client is a ward of the commissioner; the county is not precluded from providing services.

### 9525.1860 [Emergency] REIMBURSABLE SERVICES.

**Subpart 1. General limits.** The costs of providing the home and community-based services defined in subpart 2, limited in accordance with subpart 3, are reimbursable under the medical assistance program for as long as the ~~federal~~ waiver from the federal United States Department of Health and Human Services is in effect in the state of Minnesota.

**Subp. 2. Definitions.** For the purposes of this part the following terms have the meanings given them.

A. "Case management" means services provided to and with the involvement of the client including: assessing client needs and strengths; client screening as described in Minnesota Statutes, section 256B.092; developing individual service plans; analyzing and coordinating services; monitoring and evaluating client progress and the outcome of services provided to the client; and assuring the protection of clients' rights under Minnesota Statutes, ~~sections 13.46~~ chapter 13 and sections 626.556 and 626.557; and parts 9555.8000 to 9555.8500.

E. "In-home family support services" means residential-based habilitation services designed to enable the family to care for and maintain the client in the home and may include training and counseling for the client and the client's family. In-home family support services are only reimbursable for clients under 21 years of age and may include training of the client and the client's family and counseling for the client and the client's family.

F. "Leave days" means days when a client is temporarily absent from services.

G. "Minor physical adaptations to the home" means one or more of the structural changes to the client's residence set forth in subpart 3, item D. Minor physical adaptations to the home must be designed to enable the client to avoid institutionalization by increasing the client's mobility ~~and~~ or protecting the client against injury. Minor physical adaptations to the home are only reimbursable for clients with mobility problems, sensory deficits, or behavior problems. Minor physical adaptations are limited to those named in subpart 3, item ~~D~~ E.

~~G~~ H. "Residential-based habilitation services" means habilitation services provided in the client's residence. In-home family support services, supported living arrangements for children, and supported living arrangements for adults are residential-based habilitation services.

~~H~~ I. "Respite care" means short-term supervision, assistance, and care provided to a client due to the temporary absence or need for relief of the client's family, foster family, or primary caregiver. Respite care ~~includes~~ may include day, overnight, in-home, ~~and~~ or out-of-home services, as needed.

I. J. "Supported living arrangements for adults" means residential-based habilitation services provided on a daily basis to adults who require 24 hours or less of supervision, assistance, or training, in a residence for up to six clients.

~~J~~ K. "Supported living arrangements for children" means residential-based habilitation services provided on a daily basis to clients under ~~24~~ 18 years of age in a residence for up to three clients.

**Subp. 3. Limitations.** The provision of home and community-based services is limited as follows in items A to I.

A. ~~Staff time billed~~ Billings submitted by the provider shall be limited to time actually and reasonably spent:

(1) in direct contact with the client to assist the client in attaining the goals and objectives specified in the client's individual service plan;

(2) in verbal or written contact with professionals or others regarding the client's progress in attaining the goals and objectives specified in the client's individual service plan; or

C. Homemaker services may be provided only if:

(1) the person regularly responsible for these activities is temporarily absent or is ~~temporarily~~ unable to manage the home and care for the client; or

D. Leave days are reimbursable for supported living arrangements for children or supported living arrangements for adults if the client intends to return to the service. Billings may be made for leave days only when the client is:

(1) hospitalized;

(2) on a therapeutic overnight trip, camping trip, or vacation;

(3) home for a visit; or

(4) in respite care.

Leave days which are not included in the individual service plan may not be billed for without county authorization. The county and the provider must document all leave days for which billings are made and specify the reasons the county authorized the leave days.

E. Reimbursement for minor physical adaptations to the home shall be limited to an average cost of \$3,000 per client for all clients in the county. The average cost limitation applies to the entire period of time during which the clients receive home and community-based services. Minor physical adaptations to the home must be limited to the purchase and installation of one or more of the following ~~in subitems (1) to (12):~~

(3) elevated ~~bathub~~ bathtubs and toilets;

(9) modified cabinets and sinks ~~which~~ that provide wheelchair space;

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

## ADOPTED RULES

~~E. F.~~ Home and community-based services must not be provided to a client while the client is a resident of or on leave from an ICF/MR or on leave from an ICF/MR, skilled nursing facility, intermediate care facility, or a hospital.

~~F. G.~~ Respite care must be provided only for the client's family, or foster family, or if the client is in a supported living arrangement, ~~respite care may be provided~~ for the client's primary caregiver.

~~G. H.~~ Room and board costs are not allowable costs for ~~residential based habilitation services~~ home and community-based services except respite care provided out of the client's residence.

~~H. I.~~ For the purposes of this part, the services in subitems (1) to (9) have the meanings given them in parts 9500.0750 to 9500.1080. If any of the services named in subitems (1) to (9) are provided to a client, the cost of the services must be included in the rate billed by a the provider for reimbursement under parts 9525.1800 to 9525.1930 [Emergency]. These services are not reimbursable under any other rule or rules for clients in home and community-based services:

~~I. J.~~ Control of the delivery of home and community-based services shall be limited as stated in Minnesota Statutes, section ~~256B.504~~ 256B.491.

### 9525.1870 [Emergency] PROVIDER CONTRACTS AND SUBCONTRACTS.

**Subpart 1. Contracts.** In order for a provider to receive medical assistance reimbursement for home and community-based services, the provider must have a contract with the host county. The contract must contain at least the information in items A to ~~M~~ L and subpart 2:

~~E.~~ description of the purposes of the services to be delivered;

~~F.~~ description of how the services will benefit the clients in attaining the goals in the clients' individual service plans;

~~G. F.~~ description of how the benefits of the services will be measured;

~~H. G.~~ agreement to develop clients' individual program plans in accordance with the goals and objectives specified in the clients' individual service plans;

~~I. H.~~ billing rate and total budget for home and community-based services;

~~J. I.~~ description of county contract monitoring procedures agreed to by the provider, including frequency of monitoring;

~~K. J.~~ the starting and ending dates of the contract;

~~L. K.~~ description of program and financial records to be maintained by the provider in accordance with part 9525.1920 [Emergency]; and

~~M. L.~~ name of the person responsible for ensuring that the provider is in compliance with the data practices in Minnesota Statutes, section 13.46, subdivision 10, paragraph (d).

**Subp. 2. Required provision.** The contract must contain the following language verbatim: "The county ~~shall~~ may withhold reimbursement to the provider if either the county or the Minnesota Department of Human Services has reasonable grounds to believe that the contract of the county with the provider or the subcontract of the provider with any subcontractor of services has been breached in any material manner or is anticipated to be breached in any manner that the provider or subcontractor is taking or failing to take any action that constitutes anticipatory breach. If the breach occurs, the county may recoup any payments made for the period during which the breach occurred. The provider acknowledges and agrees that the Minnesota Department of Human Services is a third-party beneficiary, and as such is an affected party under this contract and as such may recoup payments made by the county to the provider in event of breach of this contract if the county does not recoup the payments. The provider specifically acknowledges and agrees that the Minnesota Department of Human Services has standing to and may take any appropriate administrative action or sue the provider for any appropriate relief in law or equity, including, but not limited to rescission, damages, or specific performance of all or any part of the contract between the county and the provider. The provider specifically acknowledges that the county and the Minnesota Department of Human Services are entitled to and may recover from the provider reasonable attorney's fees and costs and disbursements associated with any action taken under this paragraph. This provision shall not be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity."

**Subp. 3. Subcontracts.** If the provider subcontracts with another contractor the provider must:

E. ensure that the subcontract contains the following language verbatim: "The provider ~~shall~~ may withhold reimbursement to the subcontractor if either the county or the Minnesota Department of Human Services has reasonable grounds to believe that the subcontract of the provider with the subcontractor has been breached in any material manner or is

anticipated to be breached in any manner that the subcontractor is taking or failing to take any action that constitutes anticipatory breach. The subcontractor acknowledges and agrees that the county and the Minnesota Department of Human Services are third-party beneficiaries, and as such are affected parties under this subcontract and as such either or both may recoup payments made by the provider to the subcontractor in event of breach of this subcontract. The subcontractor specifically acknowledges and agrees that the county and the Minnesota Department of Human Services have standing to and may take any appropriate administrative action or sue the subcontractor for any appropriate relief in law or equity, including, but not limited to rescission, damages, or specific performance for all or any part of the subcontract between the subcontractor and the provider. The subcontractor specifically acknowledges that the county and the Minnesota Department of Human Services are entitled to and may recover from the subcontractor reasonable attorney's fees and costs and disbursements associated with any action taken under this paragraph. This provision shall not be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity."

**Subp. 4. Noncompliance.** If the provider or subcontractor fails to comply with the provisions of the contract, the county may seek any available legal remedy.

The county shall notify the commissioner in writing within 30 days when the county has reasonable grounds to believe that a contract required under this part has been breached in a material manner or that a provider or subcontractor has taken any action or failed to take any action that constitutes anticipatory breach of the contract. The county may allow the provider or subcontractor a reasonable amount of time to cure the breach or anticipatory breach. The county shall notify the commissioner in writing within ten working days if the provider or subcontractor takes any action or fails to take any action in response to the opportunity to cure. In the notice, the county shall inform the commissioner of the action the county intends to take.

#### **9525.1880 [Emergency] COUNTY PROPOSAL AND APPROVAL OF COUNTY PROPOSAL.**

**Subp. 3. County proposal for fiscal year 1986.** In order to be considered for reimbursement under parts 9525.1800 to 9525.1930 [Emergency] during fiscal year 1986, counties, singly or jointly, ~~shall~~ must submit to the commissioner an annual proposal for the provision of home and community-based services to clients for which the county or counties are financially responsible. The proposal must:

B. Identify the persons to whom the county expects to provide the home and community-based services. If counties are applying jointly, each county must identify the persons for which the county is financially responsible. For each person the county shall identify:

(6) the projected starting date of the home and community-based services; and

D. Describe how the county proposal affects the admission of children to state hospitals and discharge of children ~~in~~ from state hospitals as required in the *Welsch v. Levine* consent decree.

E. Describe how the proposal limits the development of new community-based ICF/MR beds ~~or~~ and reduces the county's use of existing ICF/MR beds in state-operated ICFs/MR and community ICFs/MR, including any steps the county has taken to encourage voluntary decertification of community-based ICF/MR beds.

**Subp. 4. Review and approval of proposal.** The commissioner shall review all proposals submitted in accordance with subparts 1 to 3. ~~In~~ For fiscal year 1985, all proposals that meet the requirements of parts 9525.1800 to 9525.1880 [Emergency] shall be approved. ~~In~~ For fiscal year 1986, the commissioner shall only approve the county applications that meet the requirements of parts 9525.1800 to 9525.1880 [Emergency] and that demonstrate compliance with the goals of the department as stated in items A to D:

C. limitation of the development of new community-based ICF/MR beds ~~or~~ and reduction of the use of existing ICF/MR beds in state-operated ICFs/MR and community-based ICFs/MR; and

D. integration of home and community-based services into the county's administrative services planning system.

If the proposal is disapproved, the commissioner shall notify the county, in writing, of the reasons why the proposal was not approved. The county has seven days after receipt of the written notice in which to revise the proposal and resubmit it to the commissioner.

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## ADOPTED RULES

### 9525.1890 [Emergency] ALLOCATION OF HOME AND COMMUNITY-BASED SERVICE MONEY.

**Subpart 1. Allocation of diversions; fiscal year 1985.** To allocate home and community-based services money for diversions for fiscal year 1985, the commissioner shall compare the number of diversions projected in the approved county proposal and the number of diversions projected for the county by the commissioner. The commissioner's projections shall be the average of the projected utilization of state-operated and community-based ICF/MR beds using historical utilization ~~by~~ for the county; and the projected per capita utilization of state-operated and community-based ICF/MR beds ~~by~~ for the county, both of which are adjusted to conform with the number of diversions projected in the ~~federal~~ federal waiver ~~application~~. The county's allocation of money for diversions shall be based on the lesser of the number of diversions projected in the approved county proposal or the number of diversions projected for the county by the commissioner.

**Subp. 2. Allocations of diversions; fiscal year 1986.** To allocate home and community-based services money for diversions for fiscal year 1986, the commissioner shall project the number of diversions for the county ~~under using the procedure in~~ subpart 1 and adjust the projection based on the county's actual use of allocated diversions during fiscal year 1985. If the county uses less than the number of diversions allocated for fiscal year 1985, the commissioner may decrease the number of diversions projected for the county for fiscal year 1986 by the commissioner. The county's allocation of money for diversions shall be based on the lesser of the number of diversions in the approved county proposal and the number of diversions projected for the county by the commissioner.

**Subp. 4. Notification of allocation.** The commissioner shall notify all counties, in writing, of the amount of home and community-based services money allocated to each county or if the proposal was submitted jointly, to the group of counties if the proposal was submitted jointly.

**Subp. 5. Review of allocation; reallocation.** The commissioner shall review the projected and actual use of home and community-based services by all counties participating in the program on a quarterly basis, and report the findings to all the counties in the state. The commissioner may reduce the allocation to a county if the commissioner determines, in consultation with the county, that the initial allocation to the county will not be used during the allocation period. The commissioner may reallocate the unused portion of the county's initial allocation to another county or other counties in the same geographic region that plan to expand home and community-based services or provide home and community-based services for the first time. If there is not a sufficient number of projections to use the unused allocation from counties within the geographic region, the commissioner may reallocate the remainder to another county or other counties in other geographic regions that plan to expand home and community-based services or provide home and community-based services for the first time.

**Subp. 6. Preference during reallocation process and in fiscal year 1986.** The commissioner may give preference during the reallocation process and in the allocation of funds for fiscal year 1986 to proposals submitted by counties that have not previously provided home and community-based services. In allocating funds for fiscal year 1986, the commissioner shall give priority to the continued funding of home and community-based services for clients who received home and community-based services in fiscal year 1985 and continue to be eligible for home and community-based services in fiscal year 1986.

### 9525.1900 [Emergency] AGREEMENT BETWEEN STATE AND COUNTY.

**Subpart 1. Contents of agreement.** The county must have a legally binding written agreement with the state in order to receive home and community-based services money. The agreement must include provisions specifying that:

F. the county will comply with all applicable standards in parts 9525.0010 to 9525.0100 or their successor parts;

**Subp. 2. Additional requirements.** If the county provides home and community-based services in addition to case management, the agreement must specify the services to be provided by the county ~~and must meet all the requirements in part 9525.1870 [Emergency].~~

### 9525.1910 [Emergency] COUNTY FUNDING OF HOME AND COMMUNITY-BASED SERVICES.

**Subpart 1. County responsibility.** The county shall fund home and community-based services in accordance with subparts 2 to ~~5~~ 4.

**Subp. 2. Distribution of money.** The total amount of money allocated to a county for home and community-based services in a fiscal year shall ~~be not exceed~~ the statewide average daily reimbursement rate multiplied by the total number of days the home and community-based services will be provided to the clients. The statewide average daily reimbursement rate shall be calculated by dividing the total amount of money available under the ~~federal~~ federal waiver by 365 days and then dividing the quotient by the department's projection of the total number of clients to receive home and community-based services as stated in the ~~federal~~ federal waiver ~~application~~.

**Subp. 3. Rate setting.** The host county shall determine the rates to be paid to providers for home and community-based services and retain documentation of the process and data used to determine the rate. The commissioner shall review rates to ensure that the criteria in subpart 4, item C are met.

**Subp. 4 Cost limitations.** There is no dollar limitation on the amount of home and community-based services money that may be used per client. In authorizing and billing for home and community-based services for individual clients, the county must comply with items ~~A and B~~ to C. For counties applying jointly, the total cost and total allocation in item A shall be the total cost and total allocation for all of the counties represented on the application and the average cost in item B shall be the average cost for all clients included in the application.

**Subp. 5. Leave days.** ~~Leave days are days when a client is temporarily absent from services. Leave days are reimbursable for supported living arrangements for children or supported living arrangements for adults if the client intends to return to the service. Normal billings may be made for leave days only when the client is:~~

- ~~A. hospitalized;~~
- ~~B. on a therapeutic overnight trip, camping trip, or vacation;~~
- ~~C. home for a visit; or~~
- ~~D. in respite care.~~

~~Leave days which are not included in the individual service plan may not be billed for without county authorization. The county and the provider must document all leave days for which billings are made and specify the reasons the county authorized the leave days.~~

C. The cost of each service must satisfy the following criteria:

- (1) the cost is ordinary, necessary, and related to client care;
- (2) the cost is what a prudent and cost conscious business person would pay for the specific good or service in the open market in an arm's length transaction; and
- (3) the cost is for goods or services actually provided.

#### **9525.1920 [Emergency] REQUIRED RECORDS AND REPORTS.**

**Subpart 1. Provider records.** The provider and any subcontractor the provider contracts with shall maintain complete program and fiscal records and supporting documentation identifying the clients served and the services and costs provided under the provider's home and community-based services contract with the county. These records must be maintained in well-organized files and identified in accounts separate from other facility or program costs. The provider's and subcontractor's records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.1750 to 9505.2150.

**Subp. 2. County records.** The county shall maintain complete fiscal records and supporting documentation identifying the clients served and the services and costs provided under the county's agreement with the department. If the county provides home and community-based services in addition to case management, the county's records must include the information required in part 9525.1870 [Emergency]. The county records shall be subject to the maintenance schedule, audit availability requirements, and other provisions in parts 9505.1750 to 9505.2150.

**Subp. 3. Availability of records.** The county's and the provider's, and the subcontractor's financial records described in subparts 1 and 2, shall be available, on request, to the commissioner and the federal Department of Health and Human Services in accordance with parts 9500.0750 to 9500.1080, 9505.1750 to 9505.2150, and 9525.1800 to 9525.1930 [Emergency].

**Subp. 4. Retention of records.** The county and the county's home and community based service providers, and the subcontractors shall retain a copy of the records required in subpart subparts 1 and 2 for five years unless an audit in process requires a longer retention period.

#### **9525.1930 [Emergency] PENALTIES AND APPEALS.**

**Subp. 3. Appeals by counties.** Before the commissioner withholds, recoups, or withdraws the county's allocation under subpart 1, the commissioner shall give 30 days written notice to the county and send a copy of the written notice to the affected provider or subcontractors. The written notice shall inform the county, provider, or subcontractor of ~~its~~ the right to a hearing under the contested case procedures of Minnesota Statutes, chapter 14. If the commissioner receives a written appeal of the commissioner's action within 30 days of the date the written notice is sent, the commissioner shall initiate a contested

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## ADOPTED RULES

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case proceeding. The written appeal must state the reasons the county, provider, or subcontractor is appealing the commissioner's action. The commissioner shall not take the proposed action before the hearing unless, in the commissioner's opinion, the action is necessary to protect the public welfare and the interests of the home and community-based services program.

**Subp. 4. Appeals by individuals.** Notice, appeals, and hearing procedures shall be conducted as follows:

A. A person who is considered for, or receiving, home and community-based services has a right to a hearing under Minnesota Statutes, section 256.045 if:

(1) the county fails to follow the written procedures and criteria established under part 9525.1830 [Emergency] subpart 2; or

(2) the county fails to authorize services in accordance with part 9525.1830 [Emergency] subpart 1, item E; or

(3) the provisions of parts 9525.1820 [Emergency] and 9525.1830 [Emergency] are met and the person is:

(a) not informed of the home and community-based services that are feasible for the person; or

(b) denied the right to choose between the feasible home and community-based services and ICF/MR services; or

(c) denied the right to choose among the feasible home and community-based services.

B. It is an absolute defense to an appeal under item A, subitem (1), if the county proves that it followed the established written procedures and criteria and determined that home and community-based services could not be provided to the person within the county's allocation of home and community-based services money.

C. Notice, appeal, and hearing procedures shall be conducted in accordance with parts 9525.0010 to 9525.0100 or their successor parts.

## OFFICIAL NOTICES

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Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

### Charitable Gambling Control Board

#### Outside Opinion Sought Regarding Proposed Rules Governing Lawful Gambling and the Distribution of Lawful Gambling Equipment

Notice is hereby given that the Charitable Gambling Control Board is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing lawful gambling and the distribution of lawful gambling equipment. The promulgation of these rules is authorized by Laws of Minnesota 1984, chapter 502, article 12, section 7, subdivision 4, *codified as* Minnesota Statutes 349.151, subdivision 4, which requires the agency to license organizations and suppliers, collect taxes, receive reports from and inspect records of organizations and suppliers, register gambling equipment, provide for posting of rules of play and odds and/or house percentage on each form of lawful gambling, and otherwise regulate the conduct of lawful gambling in Minnesota.

Small businesses involved in lawful gambling or distributing lawful gambling equipment are advised that they may be impacted by rules adopted by the Charitable Gambling Control Board in that the rules will provide for licenses fees, record keeping and reporting, and other procedures and requirements to which small businesses may have to adhere.

The Charitable Gambling Control Board requests information and comments concerning the subject matter of these rules.

Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Roger Franke  
Charitable Gambling Control Board  
900-904 Summit Bank Building  
310 Fourth Avenue  
Minneapolis, Minnesota 55415

Oral statements will be received during regular business hours over the telephone at 341-7676 and in person at the above address.

All statements of information and comment will be accepted through November 19, 1984. Any written material received by the Charitable Gambling Control Board will become part of the record in the event that the rules are promulgated.

Roger Franke

## **Board of Chiropractic Examiners**

### **Outside Opinion Sought Regarding Proposed Rules Defining Laboratory Measures**

Notice is hereby given that the Minnesota Board of Chiropractic Examiners (Board) is seeking information or opinions from sources outside the agency in preparing to promulgate new rules defining laboratory measures consistent with Minnesota Statutes sections 148.01 to 148.101. The promulgation of these rules is authorized by Minnesota Statutes section 148.08, subd. 3 (Supp. 1983), which requires the agency to adopt rules, including the definition of terms, necessary to administer Minnesota Statutes sections 148.01 to 148.101 to protect the health, safety, and welfare of the public.

The Board requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Kent J. Erickson, DC  
Executive Secretary  
Board of Chiropractic Examiners  
Minnesota Department of Health Building  
Room 336  
717 Delaware Street Southeast  
Minneapolis, Minnesota 55414

Oral statements will be received during regular business hours over the telephone at (612) 623-5430 and in person at the above address.

Any written material received by the Board shall become part of the record in the event that the rules are promulgated.

November 1, 1984

Kent J. Erickson, DC  
Executive Secretary  
Minnesota Board of Chiropractic Examiners

## **Department of Energy and Economic Development Energy and Economic Development Authority**

### **Notice of Public Hearing on Proposed Project and the Issuance of Bonds Under Minnesota Statutes, Chapter 116M, Inclusive—Hastings Federal Dam**

NOTICE IS HEREBY GIVEN that the Minnesota Energy and Economic Development Authority (the "Authority"), shall meet on November 28th, 1984 at 3:00 p.m. o'clock, at 900 American Center Building, 150 East Kellogg Blvd., Saint Paul, Minnesota, for the purpose of conducting a public hearing on a proposed issue of bonds (the "Bonds") under *Minnesota Statutes*, Chapter 116M, as amended and supplemented (the "Act"), to undertake and finance a project on behalf of the City of Hastings, Washington and Dakota Counties, MN. Such persons as desire to be heard with reference to said issue of Bonds will be heard at this meeting.

The project to be financed consists of the construction and equipping of a low-head hydroelectric facility on an existing

## OFFICIAL NOTICES

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dam owned by the Federal government (and operated and maintained by the U.S. Army Corps of Engineers), to be located in the City of Hastings, Washington and Dakota Counties, Minnesota (general description of location: at the existing Locks and Dam No. 2 on the Mississippi River in the City of Hastings, Washington and Dakota Counties, Minnesota) (the "Project"). The initial owner of the Project will be the City of Hastings, although the Project is expected to be operated and managed by Northern States Power Company. In addition, it is contemplated that the electricity produced by the Project will be sold to Northern States Power Company pursuant to a long-term output contract. The estimated maximum amount of the proposed bond issue is an amount equal to \$9,000,000. The Bonds shall be limited obligations of the Authority, and the Bonds and the interest thereon shall be payable solely from the revenue pledged to the payment thereof, except that such Bonds may be secured by a mortgage or security interest or other security arrangements to be created by the City of Hastings if subsequently required by the Authority. In addition the Bonds and the Project may subsequently be considered by the Authority for financial assistance to be provided by the Energy Development Fund created and established pursuant to the Act or other applicable financial assistance of the Authority. Notwithstanding the foregoing, no holders of any such Bonds shall ever have the right to compel any exercise of the taxing powers of the State of Minnesota or any political subdivision thereof to pay the Bonds or the interest thereon nor to enforce payment against any property of said State or said political subdivision.

A copy of the application to the Authority for approval of the Project, together with all attachments and exhibits thereto and a copy of the Authority's resolution accepting the application and accepting the Project is available for public inspection at the offices of the Authority at 900 American Center Building, 150 East Kellogg Blvd., St. Paul, Minnesota from the date of this notice to the date of the public hearing hereinabove identified, during normal business hours.

October 31, 1984.

By Order of the Members of the  
Minnesota Energy and Economic  
Development Authority,  
Mark B. Dayton,  
Commissioner, Department of Energy  
and Economic Development, and  
Chairman, Minnesota Energy and  
Economic Development Authority

## Public Utilities Commission

### Outside Opinion Sought Regarding Proposed Rules Governing Telephone Company Filing Requirements for Change in Rates

Notice is hereby given that the Minnesota Public Utilities Commission (the Commission) is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing telephone company filing requirements for change in rates. These rules are promulgated under the authority of Minnesota Statutes § 216.18, which authorizes the Commission to require the production of books, papers and records in a hearing or investigation, Minnesota Statutes § 216A.05, subd. 3, which authorizes the Commission similarly to require information from businesses under its jurisdiction, Minnesota Statutes § 237.075, which *inter alia* requires a telephone company seeking a change in rates to file supporting facts, opinions documents and exhibits with its request for change, and Minnesota Statutes § 237.10, which authorizes the Commission to make rules pertaining to the conduct of intrastate telephone business.

The rules would address the filing requirements for general rate case and miscellaneous rate change petitions filed by telephone companies. These rules will be similar in content to Minnesota Rules, parts 7825.3100 through 7825.4600 (Rate Changes), currently in effect for regulated gas and electric utilities. The proposed rate change rules for telephone companies should address: the documents and schedules which need to be filed, the contents of the filed documents and schedules, the handling of notices, refund and overcollection procedures, the authority for additional information requests, the treatment of confidential or non-public data, and definitions of terms applicable to the proposed rules. The proposed rules will be based, in part, on information found necessary for review of general rate case filings which have previously been filed by telephone companies.

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## STATE CONTRACTS

The Commission requests information and comments concerning the need for and content of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Randall D. Young, Executive Secretary  
Minnesota Public Utilities Commission  
780 American Center Building  
160 E. Kellogg Boulevard  
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone by Harold D. Nicholson at 612/296-7105 and in person at the above address. Copies of Minnesota Rules, parts 7825.3100 through 7825.4400 may be obtained from:

State Register and Public Documents Division  
Department of Administration  
117 University Avenue  
St. Paul, Minnesota 55155

All statements of information and comment shall be accepted until November 30, 1984. Any written material received by the Commission shall become part of the record in the event that the rules are promulgated.

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## STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-6152. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

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### Department of Administration Procurement Division

#### Commodities Contracts and Requisitions Currently Open for Bidding

<u>Requisition #</u>	<u>Item</u>	<u>Ordering Division</u>	<u>Delivery Point</u>	<u>Estimated Dollar Amount</u>
02-307-45087	Drapery Fabric	Governors Res. Council	St. Paul	Contact buyer
67-270-10262	Move of Office Furniture & Equipment	Revenue	St. Paul	Contact buyer
Various	Meat & Meat products for the month of December	Various	Various	Contact buyer
79-800-00000	Cultured Sod	Dept. of Transportation	Various	Contact buyer
26-073-16999	Furnish & Install Pool Lift	St. Cloud State University	St. Cloud	Contact buyer
29-000-36781	Uniform Fabric	Natural Resources	St. Paul	Contact buyer
12-200-81503 contract	Ion Gas Chromatograph Men's Underwear	Health Various	Minneapolis Various	Contact buyer \$30,000

## STATE CONTRACTS

Requisition #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
contract	Engineering Tapes & Rules	Transportation; Natural Resources	Various	Contact buyer
29-004-05895, etc.	Used Trucks	Natural Resources	St. Paul	Contact buyer
21-200-08914	Microfilm Storage Cabinets	Economic Security	St. Paul	Contact buyer
29-001-08128	Rental of Equipment with K/G Blad with Operator	Natural Resources—Wildlife Region I	Bemidji area	Contact buyer
79-650-A	Aggregates-Owatonna	Transportation	Owatonna	Contact buyer
79-800-A	Aggregates-Willmar	Transportation	Willmar	Contact buyer
79-600A	Aggregates-Rochester	Transportation	Rochester	Contact buyer
29-000-36907	PBX Telephone System	Natural Resources	St. Paul	Contact buyer
07-500-32564	State Patrol Shoulder Emblems	State Patrol	St. Paul	Contact buyer
78-620-20495	Automotive Tools	MN Correctional Facility	Stillwater	Contact buyer
07-700-32576	Uniform Rain & Shine Coats	Public Safety	St. Paul	Contact buyer
Contract	Printed double Window Envelopes	Human Services	St. Paul	\$60,000-\$65,000
Contract	Polyester Floor Pads	Various	Various	\$10,000-\$15,000
29-001-08165	Class V Material Hauled & Placed on the Roseau River	Natural Resources	Roseau	Contact buyer
Contract	Stripping & Straightening Used Sign Blanks	Transportation	St. Paul	\$20,000-\$30,000
26-137-03065	Purchase of Wand Readers	Mankato State University	Mankato	Contact buyer

Contact 296-6152 for referral to specific buyers.

## Department of Human Services Income Maintenance Bureau

### Request for Proposal for Social Adjustment/Mental Health Services to Refugees

Notice is hereby given that the Income Maintenance Bureau, Minnesota Department of Human Services, is seeking proposals concerning the delivery of social adjustment/mental health services in the State of Minnesota.

Social adjustment/mental health services generally consist of culturally appropriate diagnosis and assessment, follow-up and monitoring of assessed conditions, consultations in the development of out-patient treatment plans, group and individual counseling, support groups, consultations to other organizations working with individual/family refugee cases, in-service training in newly-developing and non-traditional approaches for professional and para professional staff, networking with other refugee service providers to foster the development of an appropriate continuum of care, development and delivery of non-traditional community based group and casework, facilitating support from natural leaders and helpers in targeted populations and neighborhoods as a first line resource for addressing problems.

The estimated total amount of funding will be up to \$175,000.

We must receive all proposals by 4:30 p.m., CST, Wednesday, December 5, 1984. We reserve the right to not act on this RFP.

Please direct requests for the complete information package, questions and proposals to:

Refugee Program Office  
Minnesota Department of Human Services  
444 Lafayette Road  
St. Paul, MN 55101  
612-296-1383

## **Pollution Control Agency Solid and Hazardous Waste Division**

### **Request for Proposal for Contractual Services to Conduct a Waste Tire Collection and Incineration Study**

The Minnesota Pollution Control Agency (MPCA) is seeking proposals from qualified consultants to conduct a waste tire collection and incineration study and prepare an interim report and final report with recommendations. The study is to evaluate alternate methods of waste tire collection and processing including feasibility and cost, and to design a state-wide collection system.

The projected duration of the contract is six months with an execution date anticipated for January 23, 1985. Services will be offered by the contractor on a mutually agreed upon time line. Funding for this study has been provided exclusively under Minnesota Laws 1984, Chapter 654, Article 2, section 13(g). The contract cost for the entire project will not exceed \$100,000.

The Request for Proposal (RFP) document may be obtained from and other inquiries should be directed to:

Karen A. Ryss, Project Leader  
Minnesota Pollution Control Agency  
Solid and Hazardous Waste Division  
1935 West County Road B2  
Roseville, Minnesota 55113  
Phone: 612/297-1793

The deadline for receipt of completed proposals is 5:00 p.m. on Wednesday, December 12, 1984. Proposals should be submitted to the attention of the above MPCA contact person. Late submittals will not be accepted.

## **State Planning Agency Environmental Division**

### **Request for Proposals for Contract Services for a Multi-Media Public Information Program**

Notice is hereby given that the State Planning Agency, on behalf of the Governor's Task Force on High-Level Radioactive Waste, is accepting proposals for contract services to produce a slide tape public information program to inform the public regarding the High Level Radioactive Waste Disposal Program of the U.S. Department of Energy. Proposals should be in the \$4,000-\$8,000 range.

#### **I. Background**

The Task Force was established to coordinate the state response to the possible siting of a high-level radioactive waste disposal site in Minnesota and to advise the Governor and Legislature on issues related to high-level radioactive waste. The siting process itself is the responsibility of the U.S. Department of Energy (U.S. DOE).

#### **II. Objective**

The primary objective of the slide-tape show is to inform the citizens of Minnesota of the U.S. DOE program, the implications of the program for Minnesota, and the official position of the state and to invite the public's participation in the program. It will be the contractor's duty to produce this slide-tape show, including development of the script jointly with the staff and based on a draft outline developed by Task Force staff, production of all photography and audio recordings, and provision of two reproductions of the show. The slide-tape show shall be color, 35 mm, single projector, with an inaudible synchronization signal on the cassette tape. The show shall be approximately twenty minutes long.

The contractors must have demonstrated ability to interpret technical material and a full range of media production capabilities. Work must be completed by March 1, 1985. Firms desiring consideration must submit final proposals by 4:30 p.m. December 3. All inquiries and proposals should be submitted to: Sheldon Mains, State Planning Agency, 550 Cedar Street, St. Paul, Minnesota 55101, (Phone: 612/729-4088).

# SUPREME COURT

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## Decisions of the Supreme Court Filed Friday, November 2, 1984

Compiled by Wayne O. Tschimperle, Clerk

**C7-83-1676 State of Minnesota v. Charles D. Pickett, Jr., Appellant. Court of Appeals.**

Discretion whether to depart from presumptive sentence is for trial court, not appellate court, to exercise.

Remanded for resentencing. Amdahl, C.J.

**C8-83-701 State of Minnesota v. Richard Rohda, Appellant. Hennepin County.**

Discretion whether to depart from presumptive sentence is for trial court to exercise on remand.

Remanded for resentencing. Amdahl, C.J.

**C1-84-761 In the Matter of the Conservatorship of Rudolfo Torres, Conservatee. Hennepin County Probate Court.**

The probate courts of Minnesota, by reason of both constitutional and statutory authority, have the power to order the termination of life support systems.

The order of termination in this case was not clearly erroneous.

Affirmed. Todd, J.

Concurring Specially, Kelley, Peterson, & Yetka, JJ.

**C9-83-478 State of Minnesota v. Roger Merlin Fader, Appellant. Kandiyohi County.**

Defendant was fairly tried and properly convicted of criminal sexual conduct in the first degree but is entitled to vacation of an order requiring him to make \$10,000 restitution absent a factual showing of economic loss to the victim and her family in that amount.

Remanded. Yetka, J.

**C3-83-1089 In Re: The Guardianship of June Mikulanec. Hennepin County.**

A person with a mental illness, incapacitated with respect to choosing a spouse, may have a conservator appointed for the limited purpose of approving or disapproving of the marriage.

Reversed and remanded. Yetka, J.

**C7-83-818 State of Minnesota, Commissioner of Public Safety, Appellant; v. Scott Alan Hanson. Scott County.**

District court in criminal proceedings improperly ordered reinstatement of defendant's driving privileges which the Commissioner of Public Safety properly had revoked and "cancelled."

Reversed. Yetka, J.

**C0-83-1969 Elmer J. Worden v. County of Houston, et al., Relators. Workers' Compensation Court of Appeals.**

The presumption set forth in Minn. Stat. § 176.011, subd. 15 (1982), that coronary arteriosclerosis is an occupational disease of policemen was applicable in this case, but the employer produced sufficient uncontroverted medical evidence of recognized causative factors unrelated to occupation to rebut the presumption.

Reversed. Wahl, J.

Took no part, Kelley, J.

**C6-83-1099 North Star Mutual Insurance Company, Appellant, v. Robert Moon, Tracie Dingman, Mike Steidl, d.b.a. Mike Steidl Road Maintenance, Joe Doe Corporation, Delores Moon, Guardian for Dawnette Moon, a Minor, Kawasaki Motors Corporation, U.S.A., K & K Sports, The Township of Alexandria, Minnesota, and Dairyland Insurance Company, v. North Star Mutual Insurance Company, Appellant. Douglas County.**

A registered, insured, three-wheel, all-terrain vehicle, modified by the owner for travel on the public road is, while traveling on the public road, a "motor vehicle" within the meaning of the motor vehicle exclusion of a farm liability policy.

Reversed. Simonett, J.

# TAX COURT

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Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

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## State of Minnesota Tax Court

### Dennis C. and Janice Frederickson, Appellants, v. Commissioner of Revenue, Docket No. 4019

#### Findings of Fact, Conclusions of Law, and Order for Judgment Dated October 31, 1984

This is an appeal from an Order of the Commissioner of Revenue dated June 17, 1983, as amended by an Order dated September 30, 1983, relating to income tax liability of the Appellants for calendar year ending December 31, 1979.

The above entitled matter came on for hearing before the Honorable John Knapp, Chief Judge of the Minnesota Tax Court, on May 8, 1984, in the Renville County Courthouse, Olivia, Minnesota.

The Appellants appeared pro se and Amy Eisenstadt, Special Assistant Attorney General, appeared for the Appellee.

#### Syllabus

Once a domicile is established, it continues until another domicile has been established elsewhere. The establishment of a new domicile requires physical presence in the new jurisdiction coupled with an intention to make such place one's home. A person's course of conduct is accorded greater weight than his self-serving declaration of domicile. Mere presence in another jurisdiction is not enough to establish a new domicile.

The Court, having heard and considered the evidence adduced at the trial, having reviewed the files and records herein, now makes the following:

#### Findings of Fact

1. Appellants Dennis and Janice Frederickson are cash-basis taxpayers. The period in question is January 1, 1979, through December 31, 1979. Both Mr. and Mrs. Frederickson were domiciliaries of the State of Minnesota until at least June, 1978. Mrs. Frederickson remained a domiciliary of Minnesota through 1979. The issue in this case is whether Appellant Dennis Frederickson was a resident and domiciliary of the State of Minnesota in the calendar year 1979.
2. In June, 1978, Dennis Frederickson was transferred by his employer, George A. Hormel Co., Austin, Minnesota, from the plant in Mabel, Minnesota, to the plant in Eldora, Iowa. Mr. Frederickson was employed at the Hormel plant in Iowa until June, 1980, when he was transferred back to Minnesota.
3. Prior to June, 1978, Mr. and Mrs. Frederickson owned a small farm in Mabel, Minnesota. They lived on this farm with their two sons.
4. The Fredericksons decided in June, 1978, that Mrs. Frederickson would continue to live on the Mabel, Minnesota farm in order that one son could continue school in Mabel until he graduated in 1980. This decision was also made because they did not want their oldest son to live by himself, Mrs. Frederickson did not want to quit her job as a Girl Scout Field Supervisor and they intended to use the farm as a retirement home.
5. Mrs. Frederickson and her two sons lived on the Mabel, Minnesota farm throughout 1979. Their youngest son attended the public high school in Mabel, Minnesota.
6. The Mabel, Minnesota farm was homesteaded in 1979.
7. During his employment in Iowa, Mr. Frederickson rented an apartment in Eldora, Iowa. He lived there during the week.
8. Mr. Frederickson would return to the Mabel, Minnesota farm each weekend to be with his family and to work on the farm throughout 1979.
9. Mr. Frederickson retained his Minnesota driver's license throughout 1979.
10. Mr. Frederickson continued to use his bank accounts located in Minnesota throughout 1979. He did not open any bank accounts in Iowa.
11. Mr. Frederickson received mail at his Mabel, Minnesota address.
12. In 1979 the Fredericksons owned seven vehicles that were licensed in the State of Minnesota. Mr. Frederickson

## **TAX COURT**

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purchased two cadillacs in Wisconsin and licensed them in Minnesota in 1979. He purchased a pickup truck and a car in Iowa in 1979 and licensed both vehicles in Minnesota. Mr. Frederickson did not license any vehicles in Iowa in 1979.

13. All insurance held by the Fredericksons in 1979 was purchased through agents located in Minnesota.
14. Mr. Frederickson was registered to vote in Minnesota in 1979.
15. Mr. Frederickson was a member of a church located in Spring Grove, Minnesota in 1979.
16. The Memorandum is hereby made a part of these Findings.

### **Conclusions of Law**

1. Appellant, Dennis C. Frederickson, remained a resident domiciled in the State of Minnesota for income tax purposes during all of calendar year 1979.

2. The Order of the Commissioner of Revenue is hereby affirmed.

**IT IS SO ORDERED. A STAY OF 15 DAYS IS HEREBY ORDERED.**

October 31, 1984

By the Court,  
John Knapp, Chief Judge  
Minnesota Tax Court

## ORDER FORM

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